

**FACILITY MANAGEMENT AND USE AGREEMENT BETWEEN  
THE SPORTS AUTHORITY OF  
THE METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY  
AND  
MID-ICE, LLC**

This FACILITY MANAGEMENT AND USE AGREEMENT (the "Agreement") is made and entered into as of this 1st day of February, 2018 (the "Effective Date") by and between THE SPORTS AUTHORITY OF THE METROPOLITAN NASHVILLE GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a public, nonprofit Tennessee corporation created pursuant to the Tennessee Sports Authorities Act of 1993 (the "Authority"), and MID-ICE, LLC, a Delaware limited liability company (the "Manager").

**RECITALS:**

WHEREAS, the Authority and the Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") have determined a new community ice hockey and skating recreation complex at One Bellevue Place enhances the image of both the State of Tennessee and Nashville and Davidson County, encourages and fosters economic development and prosperity for the citizens of the State of Tennessee and Nashville and Davidson County, and provides recreational and other opportunities for the citizens of the State of Tennessee and Nashville and Davidson County, as more fully described herein;

WHEREAS, Authority has entered into that certain lease agreement with the Metropolitan Government for the long-term lease of Suite B of the Building at One Bellevue Place;

WHEREAS, the Authority wishes to ensure that the ice rink is (i) operated and managed in a first class manner for the presentation of cultural, educational, entertainment, business, sporting, social and other public events and (ii) used for the playing and public exhibition of hockey related activities and events;

WHEREAS, Manager is uniquely equipped to operate and manage the ice rink in a manner that achieves the goals of the Authority and the Metropolitan Government, namely: introducing and promoting skating, hockey and fitness to Davidson County residents, affording unique and engaging educational opportunities to youth and families in Davidson County, and incorporating outreach programs for individuals with needs for financial assistance;

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the Authority and Manager, intending to be legally bound, hereby agree as follows:

**ARTICLE 1.  
DEFINITIONS**

**1.1 Recitals.** The foregoing Recitals are hereby incorporated herein as if fully set forth below and are material terms and provisions of this Agreement representing the intent of the parties hereto.

**1.2 Definitions.** Certain terms are defined in the text of this Agreement. As used in this Agreement and unless otherwise expressly indicated, the following terms shall have the following meanings:

"**Advertising**" shall mean the exclusive sale of all internal and external advertising rights to Ice Rink and other mutually agreed upon opportunities

"**Affiliate**" shall mean an entity that controls, is controlled by, or is under common control with a party now known or hereafter in the future during the Term.

"**Alterations**" shall have the meaning ascribed thereto in Article 7.2.

**“Applicable Law”** shall mean each and every applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgement, decree, injunction, writ, determination, award, directive, requirement, or decision of any Governmental Entity.

**“Authority”** shall have the meaning ascribed thereto in the opening paragraph.

**“Authority Default”** shall have the meaning ascribed thereto in Article 18.5.

**“Authority’s Equipment”** shall mean all fixtures, installations, equipment and other personal property now or hereafter located in Suite B, including but not limited to the items of equipment listed on Exhibit B, attached hereto, all of which shall be acquired by and remain the property of the Authority.

**“Authority Records”** shall have the meaning ascribed thereto in Article 8.4.

**“Basic Utilities”** shall have the meaning ascribed thereto in Article 4.1.

**“Building”** shall mean the building owned by the Metropolitan Government described in Exhibit A of which the Ice Rink is included as Suite B.

**“Capital Contribution,” “Capital Improvement Fund” and “Capital Investment Deposit”** shall have the meanings ascribed in Articles 3.1 and 3.2.

**“Civic Event”** shall mean non-profit, charitable or government related events which are for the benefit of the public, such as, by way of example and not limitation, graduations, special governmental assemblies and fund raising events for charities or not-for-profit entities and educational or training sessions.

**“Commencement Date”** shall mean the earlier of July 1, 2019 or the issuance of the certificate of occupancy for the Ice Rink.

**“Concessions”** shall mean the preparation and sale of food, alcohol, and refreshments to the public through concession stands, either fixed or portable, located at the Ice Rink.

**“Early Termination Fee”** shall have the meaning ascribed thereto in Article 2.3.

**“Effective Date”** shall have the meaning ascribed thereto in the opening paragraph.

**“Events of Force Majeure”** shall have the meaning ascribed thereto in Article 20.2.

**“Expiration Date”** shall mean seven years following the Commencement Date, provided however, the Term may be extended as provided in Article 2.4 or if the License and Use Agreement and/or the Operating and Management Agreement is terminated, then the Expiration Date shall be the date of such termination of either the License and Use Agreement or the Operating and Management Agreement.

**“Facility Systems”** shall mean the mechanical, HVAC, plumbing, electrical, structural and other systems for the operation of Suite B, including, without limitation, card-key security, fire alarm and sound systems that plays audio throughout the Building at any time during the Term herein.

**“Hazardous Substances”** shall have the meaning ascribed thereto in Article 19.1.

**“Ice Rink”** shall mean that certain ice skating facility located in Suite B, together with (i) other improvements now or hereafter located in Suite B, (ii) all Authority’s Equipment; and (iii) all rights, privileges and appurtenances thereto; provided that for purposes hereof the Ice Rink shall not include the Manager’s Equipment.

**“Ice Rink Records”** shall have the meaning ascribed thereto in Article 8.4.

**“License and Lease Agreement”** shall mean that certain License and Lease Agreement by and between the Authority and Mid-Ice, LLC dated as of August 20, 2014 governing the operation and management of the Ford Ice Center (“FIC”).

**“License and Use Agreement”** shall mean that certain Second Amended and Restated License and Use Agreement by and between the Authority and the Nashville Hockey Club, LP (“Club”), dated as of July 1, 2012 and any amendments or replacements to such agreement hereinafter made.

**“Maintenance”** shall have the meaning ascribed thereto in Article 6.2.

**“Major Repair”** shall have the meaning ascribed thereto in Article 6.1.

**“Management Fee”** shall have the meaning ascribed thereto in Article 3.3.

**“Manager”** shall have the meaning ascribed thereto in the opening paragraph.

**“Manager Default”** shall have the meaning ascribed thereto in Article 18.1.

**“Manager’s Equipment”** shall have the meaning ascribed thereto in Article 9.1.

**“Manager’s Maintenance Program”** shall have the meaning ascribed thereto in Article 6.2.

**“Manager Personnel”** shall have the meaning ascribed thereto in Article 5.2.

**“Merchandise”** shall mean the sale of (i) all convenience items, novelties, toys, souvenirs, clothing, garments, all clothing, and other merchandise and goods; and (ii) such other merchandise, including items, as may be customarily found in pro shops located within facilities comparable to the Ice Rink.

**“Naming Rights”** shall have the meaning ascribed thereto in Article 8.2.

**“Naming Rights Agreement”** shall have the meaning ascribed thereto in Article 8.2.

**“NHL”** shall mean the National Hockey League and any successor thereto.

**“Net Operating Income”** shall mean the amount by which the Operating Revenues exceed the Operating Expenses during any Operating Year.

**“Operating Expenses”** shall mean the costs and expenses reasonably incurred by Manager to perform its responsibilities and obligations hereunder, including but not limited to all payments made or liabilities incurred to obtain Net Operating Income, all Capital Contributions and Capital Improvement Deposits, Maintenance, wages, salaries and employee benefits, utility charges and deposits, reasonable audit fees (including the cost of providing any certificates required hereunder or by Authority), legal fees and other professional fees, fees payable to concessionaires or other subcontractors, the cost of refuse removal, cleaning, pest control and janitorial services, sales taxes, business taxes or use taxes applicable to the operation of the Ice Rink, the cost of building supplies, tools, equipment, premiums for insurance, expenses incurred for advertising, marketing and public relations, travel, lodging and related out-of-pocket expenses and Ice Rink related entertainment expenses incurred by Manager, the cost of necessary office supplies, freight and delivery charges, equipment rents, the cost of using credit and debit facilities, credit card fees and reasonable fees of unaffiliated third parties to secure or promote Ice Rink events.

**“Operating and Management Agreement”** shall mean that certain Second Amended and Restated Operating and Management Agreement by and between the Authority and Powers Management, LLC (“Powers”), dated as of July 1, 2012 and any amendments or replacements to such agreement hereinafter made.

**“Operating Revenues”** shall mean all receipts, revenues and income arising, directly from the use, operation and enjoyment of the Ice Rink, including, but not limited to revenues derived from the sale of Merchandise, Advertising, Naming Rights, Concessions, Pouring Rights, facility rental fees, admission fees, skate/equipment rental fees, sales of event tickets, membership fees, locker rental fees, sublease fees, and video game revenues. For the avoidance of doubt, Operating Revenues shall not include the amounts identified in Column A in the chart in Article 3.3.

**“Operating Year”** shall mean each twelve (12) month period beginning July 1 and ending June 30 during the Term, excepting the First Operating Year which shall begin on the Commencement Date and end on June 30 immediately following the Commencement Date.

**“Parking Area”** shall mean the area noted on Exhibit A. The Parking Area will be exclusive to the Building, but not separately designated between Suites A and B.

**“Person”** means a natural person, corporation, partnership, trust, joint venture, association, limited liability company or other entity.

**“Pouring Rights”** shall have the meaning given to the term in Article 8.3.

**“Replacing”** shall have the meaning ascribed thereto in Article 6.1.

**“Successor”** shall have the meaning ascribed thereto in Article 20.20.

**“Suite A”** shall mean the portion of the Building as shown in Exhibit A allocated for the use as a recreation center and operated by the Board of Parks and Recreation.

**“Suite B”** shall mean the portion of the Building as shown in Exhibit A allocated for the use as an Ice Rink and operated by Manager pursuant to the terms of this Agreement.

**“Term”** shall have the meaning ascribed thereto in Article 2.1.

## **ARTICLE 2. TERM**

**2.1 Term.** The term of this Agreement shall begin on the Commencement Date and shall expire on the Expiration Date, unless terminated earlier or further extended in accordance with the provisions of this Agreement (the “Term”). Notwithstanding the fact that this Agreement contemplates that the Term shall commence on a date subsequent to the date of the execution of this Agreement, both the Authority and Manager intend that each shall have vested rights immediately upon the Effective Date of this Agreement and that this Agreement shall be fully binding and in full force and effect from and as of the Effective Date.

**2.2 Surrender.** Upon the expiration or termination of this Agreement, Manager shall promptly surrender the Ice Rink to the Authority, leaving all Authority’s Equipment and other property owned by Authority. Manager agrees to execute any and all documents necessary to evidence such transfer promptly upon the Authority’s request therefor.

**2.3 Early Termination.** During the Term and any extension thereto, if the License and Use Agreement and the Operating and Management Agreement are terminated then this Agreement shall terminate effective on the termination of the License and Use Agreement and Operating and Management Agreement, in which case:

(a) if termination occurs by operation of this Agreement as a result of the termination of the Operating and Management Agreement by Powers Management, LLC and the License and Use Agreement by the Nashville Hockey Club, LP, for Powers’ or the Club’s default or election under such agreements, Manager shall pay to Authority as an “Early Termination Fee” the sum of the amounts listed in Column A of Article 3.3 for each remaining Operating Year of the then-current Term; or

(b) if termination occurs as a result of the natural expiration of the Operating and Management Agreement and License and Use Agreement, Manager will not have any obligation to pay an Early Termination Fee or any other amount herein; or

(c) if termination occurs as a result of the Authority’s termination of the Operating and Management Agreement and the License and Use Agreement, Manager will not have any obligation to pay an Early Termination Fee or any other amount herein.

If applicable in accordance with the foregoing, Manager shall pay an Early Termination Fee due and payable to Authority no more than sixty (60) days after the effective date of the early termination of this Agreement. Upon termination of this Agreement, neither party hereto shall have any further obligation hereunder, except (i) as provided by this Article 2.3, and (ii) obligations which expressly survive the cancellation or expiration of this Agreement.

**2.4 Extension.** The Term of this Agreement may be extended for subsequent terms of not more than seven (7) years each, solely at the option of Authority. Authority shall notify Manager of its intent to extend the Term twelve (12) months prior to the Termination Date, and shall indicate the duration of the extended Term. In no event shall the Term of this Agreement, including any extensions, exceed the term of either the License and Use Agreement or the Operating and Management Agreement. In the event that Authority opts not to extend this Agreement pursuant to the provisions in this Article 2.4, Authority shall reimburse Manager a portion of the Capital Contribution equal to the amount of \$3,000,000 less \$100,000 for each year this Agreement was in effect.

### **ARTICLE 3. CAPITAL CONTRIBUTIONS, CAPITAL INVESTMENT DEPOSITS AND MANAGEMENT FEES**

**3.1 Capital Contributions.** The Manager shall make a \$3,000,000 contribution to the Authority in respect of the capital costs of constructing the Ice Rink (the "Capital Contribution"), \$1,000,000 of which shall be payable within ten (10) days after full execution of this Agreement, and the balance of \$2,000,000 shall be payable on July 30, 2019. To the extent that Manager purchases items listed in Exhibit B prior to the full execution of this Agreement, such costs shall be deducted from the Capital Contribution described in this Article 3.1.

**3.2 Capital Improvement Fund.** In addition to the Capital Contribution described in Article 3.1 above, the Manager will make deposits ("Capital Investment Deposits") to a separate and segregated fund of the Manager (the "Capital Improvement Fund") in the amounts listed as follows:

Operating Years Five through Nine*	\$25,000
Operating Years Ten through Twenty	\$50,000
Operating Years Twenty-one through Twenty-three	\$100,000
Operating Years Twenty-four through Thirty	\$125,000

*\*Eighth and Subsequent Operating Years Applicable Only in Event Authority Elects to Extend the Term hereof pursuant to Article 2.4*

Such Capital Investment Deposits shall be made to the Capital Improvement Fund at any time during the applicable Operating Year. The Manager shall apply amounts on deposit in the Capital Improvement Fund to keep the Ice Rink and Facility Systems directly related to ice making function maintained and improved over time and in accordance with the Manager's Maintenance Program (defined in Article 6.2). The Capital Improvement Fund will not be used for any Replacing in connection with the structural Ice Rink or Facility Systems, which will be the sole responsibility of the Authority at its expense. At the end of each Operating Year, the Manager shall provide the Authority with a budget of proposed expenditures from the Capital Improvement Fund for the ensuing Operating Year and an annual accounting of all expenditures from the Capital Improvement Fund for the then ending Operating Year. In the event that the Term is extended and this Agreement is in place for at least thirty (30) years from the Effective Date, any amounts remaining in the Capital Improvement Fund at the expiration or termination of this Agreement shall be promptly remitted to the Authority. However, in the event that this Agreement expires during a period of less than thirty (30) years from the Effective Date, any amounts remaining in the Capital Improvement Fund shall remain the property of, and shall be promptly remitted to, the Manager.

**3.3 Management Fees.** As consideration for Manager's services hereunder, the Authority shall in each Operating Year pay Manager a "Management Fee" calculated as described below.

Operating Year	Management Fee		
	Equal To:	A	B
<b>First Operating Year</b>	Revenues		
<b>Second Operating Year</b>	Revenues		
<b>Third Operating Year</b>	Revenues, minus sum of (A+B)	\$250,000	0
<b>Fourth Operating Year</b>	Revenues, minus sum of (A+B)	\$250,000	25% of surplus of Net Operating Income over \$375,000
<b>Fifth Operating Year</b>	Revenues, minus sum of (A+B)	\$275,000	25% of surplus of Net Operating Income over \$412,500
<b>Sixth Operating Year</b>	Revenues, minus sum of (A+B)	\$275,000	25% of surplus of Net Operating Income over \$412,500
<b>Seventh Operating Year</b>	Revenues, minus sum of (A+B)	\$300,000	25% of surplus of Net Operating Income over \$450,000
<b>Eighth Operating Year*</b>	Revenues, minus sum of (A+B)	\$300,000	25% of surplus of Net Operating Income over \$450,000
<b>Ninth Operating Year</b>	Revenues, minus sum of (A+B)	\$300,000	25% of surplus of Net Operating Income over \$450,000
<b>Tenth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Eleventh Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Twelfth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Thirteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Fourteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Fifteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Sixteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Seventeenth Operating Year</b>	Revenues, minus sum of (A+B)	\$375,000	25% of surplus of Net Operating Income over \$562,500
<b>Eighteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$375,000	25% of surplus of Net Operating Income over \$562,500
<b>Nineteenth Operating Year</b>	Revenues, minus sum of (A+B)	\$375,000	25% of surplus of Net Operating Income over \$562,500

<b>Twentieth Operating Year</b>	Revenues, minus sum of (A+B)	\$375,000	25% of surplus of Net Operating Income over \$562,500
<b>Twenty-First Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Twenty-Second Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Twenty-Third Operating Year</b>	Revenues, minus sum of (A+B)	\$325,000	25% of surplus of Net Operating Income over \$487,500
<b>Twenty-Fourth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Twenty-Fifth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Twenty-Sixth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Twenty-Seventh Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Twenty-Eighth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Twenty-Ninth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000
<b>Thirtieth Operating Year</b>	Revenues, minus sum of (A+B)	\$350,000	25% of surplus of Net Operating Income over \$525,000

*\*Eighth and Subsequent Operating Years Applicable Only in Event Authority Elects to Extend the Term hereof pursuant to Article 2.4*

The Management Fee will be deemed to be paid upon Manager's collection of Revenues as described in Article 8.1. In each Operating Year, the Manager will deduct from Revenues each month and cause to be retained by the Authority 1/12 of the amount listed in Column A above for such Operating Year. If the monthly Revenues in each Operating Year are less than 1/12 of the amounts set forth in Column A above, Manager will promptly cause to be paid to the Authority the amount of any such shortfall in Revenues for such month. Within thirty (30) days of the completion of the annual financial statement audit, commencing with the Fifth Operating Year, the Manager will deduct from Revenues and cause to be retained by the Authority the amount listed above in Column B for the previous Operating Year (if applicable). In the event Revenues thirty (30) days after the completion of the annual financial statement audit are insufficient therefor, the Manager shall provide for the payment to the Authority of such amount.

#### **ARTICLE 4. UTILITIES**

**4.1 Basic Utilities.** Authority shall be responsible for commercially reasonable access to water, electricity, sanitary sewer service and heating and air conditioning ("Basic Utilities"), at no cost to Manager (except as specifically provided elsewhere herein), necessary for the Manager's commercial use and enjoyment of the Ice Rink. In connection with the Basic Utilities that Manager utilizes for the Ice Rink only, Manager will be responsible for the applicable usage bills in connection thereto. If some portion or substantially all of the

Basic Utilities shall be unobtainable as a result of condemnation by a competent authority, and the Authority and the Manager mutually determine, within a reasonable period of time after such taking (not to exceed 90 days) that the Ice Rink cannot economically and feasibly be used by the Manager, then such taking shall be deemed to be a permanent total taking to which the provisions of Article 15.1 shall be applicable.

**4.2 Additional Utilities.** The Manager shall be responsible for contracting for and paying the cost of all utility services other than the Basic Utilities which it desires to have furnished to the Ice Rink, including, but not limited to, telephone service, additional phone lines for computers and cable telephone service. For the avoidance of doubt, the Manager will only be responsible for contracting and paying for the cost of utility services other than Basic Utilities for the Ice Rink space and will not be responsible for any utilities in connection with the additional space(s) within the Building (e.g. Suite A).

## **ARTICLE 5. USE**

**5.1 Use of Ice Rink.** Subject to and in accordance with the terms of this Agreement, Authority hereby grants the Manager the sole and exclusive right to use, manage and operate the Ice Rink for a variety of uses, including but not limited to the sale of Merchandise, Advertising, Naming Rights and Concessions, providing sports events, concerts and other musical performances, theatrical presentations, family entertainment, camps, meetings and other events in order to maximize the benefit of the Ice Rink to Nashville and Davidson County. During each Operating Year of the Term, Manager shall provide scholarship programs, job training, internships, and other programs for the benefit of the Nashville and Davidson County community, as referenced in Exhibit D, which may be in connection with this Agreement or the License and Lease Agreement in Manager's discretion.

**5.2 Personnel.** Manager will hire and supervise all operating personnel related to the Ice Rink, including, but not limited to, janitorial, instructional, building and ice maintenance, administrative, secretarial, clerical, Ice Rink-specific security personnel and bookkeepers (collectively, "Manager Personnel"). Manager Personnel will expressly exclude basic security for the Building, Suite A, any shared space and the exterior perimeter of the Building, for which it is the understanding of the parties such security will be provided by the building owner. Any additional security necessary for the Ice Rink, as determined by the Manager, will be deemed Manager Personnel. All employees hired by Manager shall be employees of Manager and not of the Authority. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees. Authority will make reasonable efforts to cause the owner of the Building to provide information to Manager with respect to incidents that occur in and around the Building.

**5.3 Covenant of Quiet Enjoyment.** Subject in all events to the terms and conditions of this Agreement, the Authority covenants that if, and so long as, the Manager keeps and performs the material covenants, agreements, terms, provisions and conditions of this Agreement on the part of and on behalf of the Manager to be kept and performed, the Manager shall quietly enjoy its rights under this Agreement without hindrance or disturbance by the Authority or by any other person lawfully claiming the same by, through or under the Authority.

**5.4 Civic Events Use.** Recognizing the priority rights of the Manager, Manager and Authority agree to use commercially reasonable efforts to make the Ice Rink or the FIC available for Civic Events. Such Civic Events will not be charged a fee to use the Ice Rink. Upon the request of the Authority and so long as such request does not conflict with other scheduled or pending Events, Manager agrees to make the Ice Rink and/or the FIC available for a total of twelve (12) Civic Events per Operating Year herein. Manager will determine in its discretion whether such events will take place at the Ice Rink and/or FIC in each instance. The Civic Event Expense(s) (defined below) incurred by Manager for Civic Events shall be considered an Operating Expense for purposes of this Agreement, provided that, Authority shall pay, or cause to be paid, any other expenses in connection with a Civic Event that is not specifically listed as a Civic Event Expense. "Civic Event Expenses" are defined as: (i) chairs (two hundred fifty (250) or less); (ii) tables (twenty-five (25) six-foot (6') tables or less); (iii) basic A/V equipment (six (6) microphones, two (2) speakers, one (1) mixing board and four (4) TVs);



(iv) risers; (v) forty feet (40') of pipe and drape; (vi) one (1) video screen; (vii) one (1) projector; (viii) Civic Event staffing (concessions, Ice Rink security, etc.); and (ix) food and beverage. Any revenues generated by concession or merchandising sales or other such sales shall be considered Operating Revenues. Within sixty (60) days following the end of each Operating Year, upon written request from Authority, Manager shall provide to the Authority within a reasonable time thereafter a written report containing a description of each Civic Event held during such Operating Year.

**5.5 Shared Use of Parking Area.** Manager shall have the non-exclusive right to use the Parking Area and shall have access thereto at all times.

**5.6 Prohibited Use.** Suite B shall not be used for any of the activities designated in the attached Exhibit E, as may be amended or waived. For the avoidance of doubt, such prohibited uses will not include any prohibitions terminated pursuant to the attached Termination Agreement dated as of 9<sup>th</sup> day of August, 2017.

## **ARTICLE 6.**

### **MAINTENANCE, REPAIRS AND IMPROVEMENTS**

**6.1 Maintenance Repair and Replacement by Authority.** Subject to Article 6.2, Authority shall cause to be performed, at its expense, all such Major Repairs (defined below) and replacements (collectively, "Replacing"), to the structural portions of the Ice Rink and the Facility Systems reasonably necessary to maintain the structural portions and/or operations of the Ice Rink and the Facility Systems in good condition and repair, ordinary maintenance, wear and tear excepted, in accordance with applicable laws and regulations and as reasonably necessary to maintain the Ice Rink at a level consistent with other first class ice rinks. As used herein a "Major Repair" shall refer to repairs of large expenditure(s) (in proportion to the value) that extend the useful life of equipment and/or restore the ability to use the applicable equipment.

**6.2 Manager's Maintenance Responsibilities.** Manager's obligations under this Article shall include the minor or routine repair, cleaning, and routine upkeep (collectively, "Maintenance") of the Ice Rink, of Facility Systems, of Manager's Equipment, or any property, structures, surfaces, facilities, fixtures or furnishings related to the Ice Rink, except as otherwise provided herein. For the avoidance of doubt, Manager will not be responsible for Replacing the Authority's equipment. By way of illustration, and without limiting the generality of the foregoing, Maintenance by Manager of the Ice Rink and the Facility Systems, shall include: (i) preventive or periodic maintenance procedures for equipment, fixtures or systems, (ii) periodic testing and maintenance of building systems, such as mechanical, card-key security, fire alarm and sound systems, (iii) regular maintenance procedures for the roof, HVAC related to the Ice Rink, plumbing, mechanical, electrical and structural systems, such as periodic cleaning, lubrication, and changing of air filters, but specifically excluding the Replacing or Major Repair of the structural portions of the Ice Rink or the Facility Systems, and (iv) providing for all improvements, custodial services, fixtures, trade fixtures, furnishings, equipment, to be maintained in good working order and in a clean and safe and reasonably attractive condition, reasonable wear and tear excepted. Manager shall devise and implement procedures (including preventive maintenance procedures) and a maintenance program ("Manager's Maintenance Program") reasonably designed to keep the Ice Rink, Facility Systems, Manager's Equipment, and Authority's Equipment in good order and condition. Manager's Maintenance Program shall (i) provide for the creation of a record for all fixtures, trade fixtures, furnishings, installations and equipment that contains a description of each item and the manufacturers specifications/recommendations for the maintenance and repair thereof, (ii) develop work orders for maintenance to be undertaken at the Ice Rink, and (iii) provide for the inputting of information following the completion of each work order in order to develop a history of the Maintenance of the Ice Rink. To the extent that Replacing of Authority's Equipment is necessary for Manager to operate the Ice Rink in accordance with Article 5, Authority shall be responsible for such replacement. Nothing in this Article 6.2 shall require Manager to perform any Major Repair or Replacing that are the express obligation of the Authority under Article 6.1 or any of the other terms of this Agreement. Any contractor procured by the Manager for the performance by the Manager of Maintenance, security, or for any other service permitted or required to be performed by the Manager hereunder, shall be required by the Manager to maintain insurance and bonds as reasonably required by

Authority. For the avoidance of doubt, Manager will not have any such responsibility and/or obligation to any area(s) outside of the Ice Rink.

## **ARTICLE 7. IMPROVEMENTS AND ALTERATIONS**

**7.1 Authority's Construction of Ice Rink.** Authority and Manager acknowledge and agree that the Metropolitan Government will cause to be constructed the Ice Rink, as part of the Bellevue Recreation Center project construction.

**7.2 Authority Alterations.** Upon substantial completion of the Ice Rink, Authority shall have the right to make such alterations, additions and improvements (collectively, "Alterations") to the Ice Rink as it deems necessary or desirable, except that Authority shall not make any Alterations to the Ice Rink unless it first provides written notice to the Manager. Major Repairs and Replacing that Authority is required to make under this Agreement shall not be deemed Alterations. Authority agrees to make all Major Repairs and Replacements at a level consistent with other first class ice rinks and in a manner that will not disrupt Manager's operation and use of the Ice Rink.

**7.3 Manager Alterations.** The Manager may make Alterations, at its own expense, to the Ice Rink so long as the same do not affect the structural portions thereof or materially alter the Facility Systems. Manager shall provide written notice to the Authority within sixty (60) days prior to the commencement of any alteration to the Ice Rink, provided that Manager's obligations under Article 6.2 shall not be deemed Alterations. The Manager agrees that all of its Alterations will be made (i) in a good faith and workmanlike manner; (ii) with materials of substantially the same or better quality as the then existing materials; and (iii) in a manner that does not disrupt or interfere with the operation and management of the Ice Rink.

## **ARTICLE 8. REVENUES**

**8.1 Revenues.** The Manager shall be entitled to the receipt of all Operating Revenues resulting from the use, management and operation of the Ice Rink. The Authority hereby disclaims any and all right to receive any Operating Revenues from the Ice Rink other than those revenues that are expressly granted to the Authority herein.

**8.2 Naming Rights Agreements.** Subject to the provisions of this Article, the Manager is hereby granted the exclusive power by Authority to sell the right to name the Ice Rink (both interior and exterior) (the "Naming Rights") to a sponsor or sponsors. In addition, Manager shall be entitled to all Operating Revenues generated by the sale of the Naming Rights. The terms and conditions on which the Naming Rights are sold (a "Naming Rights Agreement") shall be determined solely by the Manager from time to time during the Term hereof; provide, however, that (i) all Naming Rights Agreements shall expire no later than the expiration or termination of the Term hereof, and (ii) given the Authority's substantial interest in the Ice Rink and the public character thereof, the Manager shall not permit any name to be given to the Ice Rink or any portion thereof that (A) violates Applicable Law, or (B) would reasonably cause embarrassment to the Authority (such as name containing slang, barbarisms or profanity, names that relate to any sexually oriented business or enterprise or names that contain any overt political or religious reference). Further, Manager agrees that such name selected by Manager will distinguish the Ice Rink from the attached recreational center. The Manager agrees to indemnify, defend and hold harmless the Authority from any and all Claims and Costs arising out of the sale of the Naming Rights or any Naming Rights Agreement, except with respect to any actions taken by the Authority. Any Naming Rights Agreement entered into that does not comply with the terms of this Article shall be null and void.

**8.3 Pouring Rights and Other Branded Product Identification.** Manager shall have the exclusive right to designate the brands of products sold at the Ice Rink (the "Pouring Rights"). Manager shall retain all Operating Revenues derived from the exercise of the Pouring Rights. The terms and conditions of any agreement granting an entity the exclusive right to sell its brand of Products at the Ice Rink shall be determined solely by Manager from time to time during the Term hereof.

8.4 **Accounting Generally.** Manager and Authority shall each maintain accounting books and reports with respect to their respective operations hereunder in accordance with GAAP (the “Authority Records” and the “Ice Rink Records”, respectively), and shall keep and maintain such records on any particular Operating Year for a period of not less than three (3) years following the conclusion of any such Operating Year or such longer period as may be required by Applicable Law.

8.5 **Audits.** Manager and Authority (and their respective authorized representatives) shall each be afforded reasonable access to all necessary and relevant Ice Rink Records and Authority Records relating to this Agreement. Manager and Authority shall each have the right to audit the other’s records that are relevant to this Agreement.

## **ARTICLE 9. EQUIPMENT AND PERSONAL PROPERTY**

9.1 **Manager’s Equipment.** Manager shall be responsible for repairing and maintaining, at its sole cost and expense, the ice surface, dashboards, goals, all trade fixtures installed by Manager, furnishings, equipment and other personal property necessary for Manager’s activities and use of the Ice Rink, including, without limitation, activity supplies, equipment, uniforms, skates, protective equipment, medical equipment, pucks, office furnishings and supplies, towels, laundry services, computers, and water coolers, but excluding all items identified as Authority’s Equipment in Exhibit B (the “Manager’s Equipment”). To the extent that replacement of Manager’s Equipment is necessary for Manager to operate the Ice Rink in accordance with Article 5, Manager shall be responsible for replacing such Manager Equipment at its sole cost and expense. Authority acknowledges and agrees that none of the Manager’s Equipment shall be deemed to be a fixture, regardless of whether any such Manager’s Equipment may be or shall become attached to the Building. However, upon expiration of the Term or other termination of this Agreement, the Manager agrees to restore the Ice Rink to the condition at the Commencement Date, ordinary wear and tear excepted, and any unrepaired damage caused by the Manager’s removal of the Manager’s Equipment shall be paid by the Manager.

## **ARTICLE 10. INSURANCE AND INDEMNIFICATION**

10.1 **The Manager’s Insurance.** From and after the Commencement Date, the Manager shall procure and maintain in force, at its sole expense, (i) commercial general liability insurance, with minimum limits of \$2,000,000 combined single limit per occurrence, and, if necessary, \$1,000,000 umbrella or excess liability covering liability arising from premises, operations, independent contractors, personal and advertising injury, products completed operations and liability assumed under an insured contract on an occurrence basis, protecting the Manager, the Authority and the Metropolitan Government against all loss, damages and liability (including, but not limited to, liability for bodily injury and death) that may be incurred as a result of the Manager’s acts or omissions in the use and occupancy of the Ice Rink, or any operations of the Manager in, on or about the Ice Rink, (ii) commercial property insurance which shall, at minimum, cover perils insured under the ISO special causes of action form, insuring all of Manager’s Equipment and the Manager’s business personal property located in, on or about the Ice Rink, to the extent of one hundred percent (100%) of its replacement cost, (iii) workers compensation insurance covering Manager Personnel and the Manager’s employees per statutory limits, and (iv) such other insurance coverage or coverages in such amounts as the Authority may reasonably require the Manager to carry from time to time consistent with commercially reasonable practices and standards. Such limits may be satisfied by combination of a commercial general liability and umbrella or excess liability policy.

10.2 **The Authority’s Insurance.** If the Authority does not elect to self-insure (which the Authority shall have the right to do) during the Term, then from and after the Effective Date, the Authority shall procure and maintain or cause to be produced or maintained, in force, at its sole expense, the following:

(a) Comprehensive property and Casualty insurance for replacement cost on an “all risk” peril basis (other than earthquake and floods);

(b) Commercial property insurance against any and all loss or damage to the Ice Rink caused by earthquake or flood in an amount not less than \$10,000,000;

(c) Commercial general liability insurance (on an "occurrence" basis form), with a minimum limit of not less than \$1,000,000 per occurrence, which includes coverage for the Ice Rink, sidewalks and private drives adjoin or appurtenant to the Ice Rink; and

(d) Such workers' compensation insurance coverage per statutory limits.

In addition to Authority's obligations above, in the event Authority has any self-insurance exposure, it shall have the same obligations that any open market insurance carrier would have.

**10.3 Requirements of Insurance; Insurance Certificates.** All insurance required hereunder shall be with insurance companies licensed to issue insurance in the State of Tennessee with a financial rating of at least A/VIII status as rated in the most recent edition of Best's Insurance Reports. Coverage limits may be satisfied through a combination of primary and umbrella/excess policies. Umbrella/excess policies shall follow form of the underlying coverage. Manager shall name Authority and the Metropolitan Government as additional insureds on Manager's Commercial General Liability and Umbrella/Excess Liability policies. Additional insured coverage shall apply on a primary and non-contributory basis. All liability insurance shall contain a "cross-liability" coverage (separation of insureds or a "severability of interest" provision). Each of the Manager and the Authority shall furnish to the other upon request certificates of insurance evidencing that the insurance they are required to maintain hereunder is in full force and effect. If any policy containing the coverage and other terms set forth herein is not available on a reasonable basis, the party required to keep such coverage shall in lieu thereof keep and maintain in full force and effect such policy as is then available on a reasonable basis that most nearly approximates the terms described herein. Any and all deductibles and self-insured retentions shall be the sole responsibility of the named insured. All policies shall be endorsed to provide a waiver of subrogation in favor of the additional insureds and shall contain an endorsement requiring thirty (30) days written notice from the Manager to the Authority and the Manager before any reduction in coverage, scope or amount of any policy. Each party shall provide the other with at least thirty (30) days written notice if any of the required policies are cancelled or not renewed. The insurance requirements set forth will in no way modify, reduce or limit the indemnification herein made by the Manager. Receipt of a certificate of insurance, endorsement or policy of insurance that is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify the same, nor is any verbal agreement to modify same permissible or binding.

**10.4 Waiver of Subrogation.** The Manager and Authority hereby (i) waive all claims for recovery from the other party and their respective representatives for any loss or damage insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies, and (ii) agree to cause their respective insurance policies to contain endorsements to that effect.

**10.5 Indemnification.** The Manager shall indemnify, defend and hold harmless the Authority, the Metropolitan Government, and their respective officers, directors, trustees, agents, servants and employees from and against all claims (specifically excluding any claims related to the structural portions of the Building and the Ice Rink or the Facility Systems, to the extent that such claims are not related in whole or in part to an action or inaction of the Manager) arising or resulting from (i) injuries to persons or damage to property (including, but not limited to, theft, misappropriation or other loss of property) arising from the Manager's use or occupancy of the Ice Rink or the conduct of its business therein, (ii) any activity, work or thing done, permitted or suffered by the Manager in or about the Ice Rink, (iii) from any breach or default on the part of the Manager in the performance of any covenant or agreement on the part of the Manager to be performed pursuant to the terms of this Agreement, or (iv) due to any other act or omission of the Manager, its agents, contractors or employees. Any such obligation of indemnification, notwithstanding any language in this Agreement to the contrary, applies only to the extent that the Manager is, in whole or in part, responsible for the loss, liability, claim or basis for any indemnification sought hereunder. The provisions of this Article 10.5 shall survive the expiration or termination of this Agreement.

**ARTICLE 11.  
RIGHT-OF-ENTRY**

**11.1** Authority, and including without limitation, the officers, employees, agents and other authorized persons of Authority, shall have the right, from time to time, to enter into the Ice Rink for purposes of (i) inspecting the same, (ii) making any major repairs or replacements which Authority is obligated to make hereunder, or (iii) exercising any of its rights under this Agreement. When exercising its rights hereunder, Authority shall (i) provide the Manager with reasonable notice in advance of the date on which it intends to enter upon the Ice Rink (except in the case of an emergency, in which case such advance notice shall be reduced to a reasonable advance notice under the circumstances), and (ii) use commercially reasonable efforts to minimize the interference that it causes to the operations of the Manager. The exercise of any right in this Article 11.1 reserved to Authority or its officers, employees, agents and other authorized persons, shall not constitute an actual or constructive eviction, in whole or in part, or entitle the Manager to any abatement or diminution of amounts due hereunder or relieve Manager of any of its obligations under this Agreement or impose any liability on Authority by reason of inconvenience or annoyance to the Manager or injury or interruption of the Manager's business or otherwise.

**ARTICLE 12.  
MECHANIC'S LIENS AND OTHER ENCUMBRANCES**

**12.1** No work, services, materials or labor provided to the Manager by any third party in connection with this Agreement shall be deemed to be for the benefit of Authority. The Manager shall comply with the provisions of Article 7.3 prior to undertaking any work, services, material or labor that relates to any construction, improvement, or repair on, of or to the Ice Rink. If any lien shall at any time be filed against the Ice Rink by reason of the Manager's failure to pay for any work, services, materials or labor provided to the Manager by any third party, or alleged to have been so provided, the Manager shall either (i) cause the same to be discharged or record by payment of such claim or by the filing of a bond with respect thereto in accordance with Applicable Law, or (ii) obtain written approval of the Authority (which approval shall not be unreasonably withheld, conditioned or delayed) to contest such lien and leave it undischarged and unsatisfied. In the event the Manager fails to cause any such lien to be discharged of record by payment of such claim or by the filing of a bond with respect thereto in accordance with Applicable Law or request the written approval from the Authority to contest the lien within twenty (20) days after it receives notice thereof, Authority may discharge the same by paying the amount claimed to be due, with the understanding that Authority is under no obligation to do so. Should Authority discharge any Manager lien, the Manager agrees to immediately reimburse Authority for such amount (plus Authority's reasonable costs and attorneys' fees). Failure on the part of the Manager to cause a lien to be discharged by payment of such claim or by the filing of a bond with respect thereto in accordance with Applicable Law, request the written approval to contest a lien or to reimburse Authority as provided in this Article 12.1 shall be considered a Manager Default and subject to the terms of Article 18.

**ARTICLE 13.  
WAIVER OF LIABILITY**

**13.1** Subject to the obligation of Authority to insure as provided in Article 10.2 hereof and except to the extent caused by the Authority's negligence or willful misconduct, Authority assumes no responsibility or liability for any damage or loss of the Manager's Equipment or other personal property located at the Ice Rink. The Manager agrees to hold Authority harmless from any damage or loss of Manager's Equipment or other personal property located at the Ice Rink.

**ARTICLE 14.  
CASUALTIES AFFECTING THE ICE RINK**

**14.1 Damage or Destruction.** If, at any time during the Term, Ice Rink or any part thereof shall be damaged or destroyed by fire or other casualty, Authority, at its cost and expense, shall, commence and thereafter

proceed as promptly as is reasonable (but in no event longer than sixty (60) days), to repair, restore, and replace the damaged Ice Rink to as nearly as possible to its condition immediately prior to such fire or casualty. During such repair, restoration, and replacement, the Manager shall be entitled to use Ice Rink until completion of such repair, restoration, and replacement to Ice Rink. The amounts to be retained by the Authority under Column A of the table set forth in Article 3.3 shall be reduced from the date of such casualty until the Ice Rink is fully restored, by an amount proportionate to the reduction in Operating Revenues as a result of such casualty. Provided that the Management Fee shall not be abated if such damages or destruction by fire or other casualty is due to the negligence, omission or intentional act of Manager, Manager's employees, agents or contractors.

## **ARTICLE 15. EMINENT DOMAIN**

**15.1 Total Condemnation.** If the Ice Rink or substantially all of the Ice Rink shall be permanently taken or condemned by any competent government entity for any public or quasi-public use or purpose, the Term of this Agreement shall end upon and not before the earlier of: (i) the date when the possession of the part so taken shall be required for such use or purpose, or (ii) the effective date of the taking.

**15.2 Partial Condemnation.** If less than all or substantially all of the Ice Rink shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, and Authority and the Manager mutually determine, within a reasonable period of time after such taking (not to exceed 90 days) that the remaining portion of the Ice Rink cannot economically and feasibly be used by the Manager, then such taking shall be deemed to be a permanent total taking to which the foregoing provisions of Article 15.1 shall be applicable. In the event this Agreement is not so terminated, this Agreement shall remain in full force and effect and Authority and the Manager shall, to the extent practical and only to the extent of the actual amount of the condemnation award received, restore the Ice Rink to a complete architectural unit reasonably suitable for the Manager's use.

**15.3 Allocation of Award.** In the event this Agreement is terminated pursuant to Article 15.1 or Article 15.2, each of the parties hereto shall have the right to seek an award for the loss of their respective interests in and to the Ice Rink and this Agreement. In the event this Agreement is not so terminated, the amount of any award for or on account of any condemnation shall be used to restore the Ice Rink as provided in Article 15.2 hereof.

**15.4 Temporary Taking.** If any right of temporary possession or occupancy of all or any portion of the Ice Rink shall be taken, the foregoing provisions of this Article 15 shall be inapplicable thereto and this Agreement shall continue in full force and effect, and the parties hereto shall have the right to seek an award for their loss in respect of such disruption of possession or occupancy.

## **ARTICLE 16. ASSIGNMENT**

### **16.1 General Restrictions on the Manager's Assignment.**

The Manager shall not:

(a) Assign, transfer, mortgage, pledge, hypothecate, or encumber, or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement, or any interest in, to or under this Agreement (other than the Operating Revenues payable to or retained by the Manager under this Agreement, which Operating Revenues may be collaterally assigned to any lender of the Manager); provided however, that Manager shall have the right to assign this Agreement to any present or future Affiliate, upon forty-five (45) days written notice to and consent of Authority, which consent shall not be unreasonably withheld, and Manager may grant to any such assignee the same rights and privileges that Manager enjoys hereunder;

(b) Allow to exist or occur any transfer of or lien upon this Agreement or the Manager's interest in this Agreement by operation of law; or

(c) Assign the Manager's interest in or rights under this Agreement, or the Manager's responsibilities under this Agreement; provided, however, that Manager shall have the right to contract to make available any portion of the Ice Rink to a third party on a short term basis;

**16.2 Permitted Manager Assignments.** Notwithstanding the provisions of Article 16.1 or any other provision of this Agreement, the Manager may, assign this Agreement to any Person (or an Affiliate of such Person) that (i) is approved by the NHL to acquire the NHL franchise of the Nashville Hockey Club, LP and (ii) properly becomes the "Manager" pursuant to the terms and conditions for assignments under the License and Use Agreement. Upon such assignment, the Manager shall be released from all further obligations under this Agreement.

**16.3 The Manager to Remain Obligated.** Consent by Authority to any assignment, subletting, sublicensing, use, occupancy, or transfer shall not, without an express agreement by Authority to the contrary, operate to relieve the Manager from any covenant or obligation hereunder arising prior to any such assignment or other transfer.

## **ARTICLE 17. REPRESENTATIONS AND WARRANTIES**

**17.1 Representations and Warranties of Manager.** The Manager represents and warrants to Authority that, as of the date hereof:

(a) The Manager is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is authorized to do business in and is in good standing under the laws of the State of Tennessee, and has all requisite power and authority to execute, deliver and perform its obligations under;

(b) This Agreement has been duly authorized, executed and delivered by Manager and constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof;

(c) Manager has obtained all authorizations, consents, or approvals required for the execution, delivery and performance by it of this Agreement; and

(d) the execution, delivery and performance of this Agreement by Manager does not conflict with, nor will it result in, a breach or violation of any of the terms, conditions or provisions of (i) any Applicable Law or (ii) any charter document, indenture, mortgage, material contract or other material agreement or instrument to which it is a party or by which it or any of its properties are bound.

**17.2 Representations and Warranties of Authority.** Authority represents and warrants to the Manager that, as of the date hereof:

(a) Authority has the power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by Authority. There is no law, regulation, or other rule that in any material way prohibits, limits, or otherwise affects the right or power of Authority to enter into and perform all of the terms and provisions of this Agreement, and each document, agreement, and instrument executed or to be executed by Authority in connection herewith and all transactions contemplated hereby and thereby. No consent, authorization or approval of, or other action by, and no notice to or filing with any governmental authority, regulatory body or any other person is required for the due execution, delivery, and performance by Authority of this Agreement, or any other agreement, document, or instrument executed and delivered by Authority or any of the transactions contemplated hereby or thereby.

(b) The execution and delivery of this Agreement by Authority has been duly and validly authorized by all necessary action. This Agreement, and all other agreements, documents, and instruments executed and

delivered by Authority in connection herewith are legal, valid, and binding obligations of Authority, enforceable against Authority in accordance with their respective terms, subject to applicable laws effecting creditors' rights, generally.

(c) The execution, delivery, and performance of this Agreement and each agreement, document, and instrument executed or to be executed and delivered by Authority in connection herewith does not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under: (i) any agreement, document, or instrument to which Authority is a party or by which Authority's assets may be bound or affected, or (ii) applicable law. The execution, delivery, and performance of this Agreement and each agreement, document, and instrument executed or to be executed and delivered by the Manager in connection herewith does not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Authority.

(d) Authority is: (i) the holder of a ground lease with the Metropolitan Government of Nashville and Davidson County for the property described in Exhibit A and (ii) the owner of its fixtures, installations, equipment, and other personal property forming a part of the Ice Rink; provided the foregoing shall not prevent Authority from transferring ownership of the Ice Rink to another entity.

(e) Authority shall cause the Ice Rink to be constructed in a workmanlike manner, in accordance with Applicable Laws.

## **ARTICLE 18. DEFAULT AND REMEDIES**

**18.1 Manager Defaults.** The occurrence of any one or more of the following constitutes a default (each, a "Manager Default") by the Manager under this Agreement:

(a) the Manager's failure to make any payment of any amount due to Authority hereunder; provided, however, if such failure is cured within thirty (30) days after written demand from Authority to the Manager, the Manager shall not be in default; or

(b) any representation or warranty made by the Manager herein was not true in any material respect when made and such breach shall continue for thirty (30) days after written notice thereof from Authority to the Manager, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, the Manager shall not be in default hereunder so long as it commences to cure the same within the aforementioned thirty (30) day period and thereafter diligently prosecutes the cure to completion; or

(c) the Manager's failure to observe or perform any other covenant, agreement, condition, or provision of this Agreement and such failure shall continue for thirty (30) days after written notice thereof from Authority to the Manager, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, the Manager shall not be in default hereunder so long as it commences to cure the same within the aforementioned thirty (30) day period and thereafter diligently prosecutes the cure to completion; or

(d) the Manager makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for the Manager or for the major party of its property; or

(e) a trustee or receiver is appointed for the Manager or for the major part of its property and is not discharged within thirty (30) days after such appointment; or

(f) bankruptcy, reorganization, arrangement, insolvency, or liquidations proceedings, or other proceedings for the relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against the Manager, and, if instituted against the Manager, are allowed against it or are consented to by it or are not dismissed within thirty (30) days after such institution.

**18.2 Rights and Remedies of Authority.** Upon the occurrence of any Manager Default, Authority shall have the rights and remedies hereinafter set forth, which shall be distinct, separate, and, except for the



remedy set forth in Article 18.2(a) below, cumulative, but shall not operate to exclude or deprive Authority of any other right or remedy allowed to it by law or in equity:

(a) Authority may terminate this Agreement by giving written notice to the Manager and recover damages; or

(b) Authority may enforce the provisions of this Agreement and may enforce and protect the rights of Authority hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein; and/or

(c) Authority may obtain any other available legal or equitable remedy or relief, including, but not limited to, injunctive relief; and/or

(d) Authority may, without terminating this Agreement, recover from the Manager all actual, consequential, and incidental damages that Authority suffers as a result of any Manager Default; and/or

(e) Authority may, at Authority's election (though without obligation), make any payment required of the Manager under this Agreement or perform or comply with any covenant or agreement of the Manager hereunder. The amount so paid, plus the reasonable cost of such performance or compliance, plus interest on such sums, shall be payable by the Manager immediately upon demand. No such payment, performance, or observance by Authority shall constitute a waiver of any default or of any remedy for default or render Authority liable for any loss or damage resulting from any such act.

**18.3 Possession.** If Authority exercises the remedies provided for in Article 18.2(a) above, the Manager shall immediately surrender possession of and vacate the Ice Rink in compliance with the provisions hereof, and if the Manager fails to so surrender possession of and vacate the Ice Rink, Authority may, without prejudice to any other remedy that it may have, expel the Manager (and any other entity who may be occupying the Ice Rink by, through, or under the Manager) from the Ice Rink, by force if necessary, without being liable for prosecution or any claim for damages on account thereof, with or without process of law, a full and complete license so to do being hereby granted to Authority. Any of the Manager's furniture, trade fixtures, equipment, or other personal property remaining in the Ice Rink after the expiration or termination of this Agreement shall be deemed abandoned and may be retained or disposed of by Authority as it sees fit, without the payment of any compensation to the Manager therefor.

**18.4 Assumption or Rejection in Bankruptcy.** If the Manager shall be adjudged bankrupt or if a trustee-in-bankruptcy shall be appointed for the Manager, Authority and the Manager agree, to the extent permitted by law, to request that the trustee-in-bankruptcy shall determine within sixty (60) days thereafter whether to assume or reject this Agreement.

**18.5 Authority Defaults.** The occurrence of any one or more of the following constitutes a default (each, an "Authority Default") by Authority under this Agreement:

(a) Authority's failure to pay any past due charges or sums owed to the Manager hereunder within thirty (30) days after written notice thereof from the Manager to Authority; or

(b) any representation or warranty made by Authority herein was not true in any material respect when made and such breach shall continue for thirty (30) days after written notice thereof from the Manager to Authority, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, Authority shall not be in default hereunder so long as it commences to cure the same within the aforementioned thirty (30) days period and thereafter diligently prosecutes the cure to completion; or

(c) Authority fails to observe or perform any covenant, agreement, condition, or provision of this Agreement and such failure shall continue for thirty (30) days after written notice thereof from the Manager to Authority, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, Authority shall not be in default hereunder so long as it commences to cure the same within the aforementioned thirty (30) days period and thereafter diligently prosecutes the cure to completion; or

(d) a trustee or receiver is appointed for Authority and is not discharged within thirty (30) days after such appointment; or

(e) bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against Authority, and, if instituted against Authority, are allowed against it or are consented to by it or are not dismissed within thirty (30) days after such institution.

**18.6 Rights and Remedies of the Manager.** If a Authority Default occurs, the Manager shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive the Manager of any other right or remedy allowed to it by law or equity:

(a) the Manager may terminate this Agreement by giving to Authority notice of the Manager's election to do so, in which event the Term of this Agreement, as well as any obligations of the Manager shall end, and all of the obligations of the Manager hereunder shall expire on the date the Manager may designate in such termination notice; and/or

(b) the Manager may enforce the provisions of this Agreement and may enforce and protect the rights of Manager hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein; and/or

(c) the Manager may obtain any other available legal or equitable remedy or relief, including, but not limited to, injunctive relief; and/or

(d) without terminating this Agreement, the Manager may recover all actual, consequential, and incidental damages that the Manager suffers as a result of any Authority Default; and/or

(e) the Manager may, at the Manager's election (but without obligation), make any payment required of Authority under this Agreement, or perform or comply with any covenant or condition imposed on Authority under this Agreement. The amount so paid, plus the reasonable cost of such performance or compliance, plus interest on such sums, shall be payable to Authority immediately upon demand. No such payment, performance, or observance by the Manager shall constitute a waiver of default or of any remedy for default or render the Manager liable for any loss or damage resulting from any such act.

## **ARTICLE 19. HAZARDOUS SUBSTANCES**

**19.1** The Manager shall not cause, permit, or suffer any hazardous substance which is likely to endanger the life of, or cause bodily injury to, any person in the Ice Rink or damage the Ice Rink or surrounding area(s) (collectively, "Hazardous Substances") to be transported, used, stored, maintained, generated, manufactured, handled, released, or discharged on, under, or about the Ice Rink; provided the foregoing provision shall not prohibit the Manager from transporting, storing, and using such Hazardous Substances as are necessary for the Manager to use the Ice Rink for the purposed permitted hereunder so long as: (i) all such Hazardous Substances are maintained only in such quantities as are reasonably necessary; (ii) the Manager complies with all Applicable Law governing the transportation, handling, storage, use, and disposal of such Hazardous Substances; (iii) the Manager does not unnecessarily dispose, release, or discharge any Hazardous Substances on, under, or about the Ice Rink; and (iv) all such Hazardous Substances are completely, lawfully, and properly removed by the Manager. If any Hazardous Substances are released, discharged, or disposed of on, under, or about the Ice Rink by the Manager or its agents, contractors, or employees in violation of this Article 19, then the Manager shall remove, remediate, monitor, and abate such Hazardous Substances, at the Manager's sole cost and expense, in compliance with Applicable Law, which obligation shall include performing all necessary testing and preparing any remedial action plan required by any governmental entity. The methodology for such removal, remediation, monitoring, and abatement shall (except in emergencies) be subject to the Authority's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The provisions of this Article 19 shall survive the expiration or termination of this Agreement.

**ARTICLE 20.**  
**MISCELLANEOUS**

**20.1 Survival.** All obligations, responsibilities, and liabilities of the Manager or Authority that have not been fully satisfied or discharged shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations theretofore accrued and all indemnification obligations set forth in this Agreement and all of the Manager's covenants concerning the surrender of the Ice Rink.

**20.2 Force Majeure.** In the event compliance with any of Authority's or the Manager's obligations under this Agreement are rendered impractical or impossible due to strikes, lockouts, labor disputes, embargoes, fire, casualty, epidemic, acts of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism, restraint by court order or order of public authority or other occurrences beyond the reasonable control of the party in question (collectively, "Events of Force Majeure"), then the time for performance of such obligations shall be extended until compliance therewith is again practical or possible; provided in no event shall financial hardship of a party constitute an Event of Force Majeure applicable to said party.

**20.3 Successors and Assigns.** Each provision of this Agreement shall extend to and shall bind and inure to the benefit not only of Authority and the Manager, but also their respective legal representatives, successors, and assigns; provided, however, that this provision shall not operate to permit any transfer, assignment, mortgage, encumbrance, lien, charge, sublicensing, or subletting contrary to the provisions of this Agreement.

**20.4 Notices.** All notices and demands required or desired to be given by either party to the other pursuant to this Agreement shall be in writing and shall be delivered personally, sent by facsimile (provided a hard copy is also promptly sent), sent by commercial overnight courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, to the addresses provided below:

If to Manager: Michelle Kennedy  
Mid-Ice, LLC  
501 Broadway  
Nashville, TN 37203  
Tel: (615) 770-2349  
Fax: (615) 770-2151

With copy to: Heidi Bundren  
Mid-Ice, LLC  
501 Broadway  
Nashville, TN 37203  
Tel: (615) 770-2255  
Fax: (615) 770-2490

If to Authority: Executive Director  
The Sports Authority of the  
Metropolitan Government of Nashville and Davidson County  
720 2nd Avenue South POB 196300  
Nashville, TN 37219  
Tel: (615) 880-1021

With copy to: Director of Law  
The Metropolitan Government of Nashville and Davidson County  
Suite 108, Metro Courthouse  
Nashville, TN 37219  
Tel: (615) 862-6341  
Fax: (615) 862-6352

Notices and demands shall be deemed given and served: (i) upon receipt or refusal, if delivered personally; (ii) one (1) business day after sending by facsimile (provided a hard copy is also promptly sent) or after deposit with an overnight courier service; or (iii) five (5) days after deposit in the United States mails, if mailed. Either party may change its address for receipt of notices by giving notice of such change to the other party in accordance herewith.

**20.5 Severability.** The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability, or effect of the remaining provisions of this Agreement.

**20.6 Entire Agreement; Amendments and Waivers.** This Agreement and the Exhibits hereto, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, letters, negotiations, and discussions, whether oral or written, of the parties, and there are no warranties, representations, or other agreements between the parties in connection with the subject matter hereof. No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by both Authority and the Manager. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected party. Either party's failure to enforce any provision of this Agreement or its acceptance of any payment shall not constitute a waiver thereof and shall not prevent such party from enforcing that provision or any other provision of this Agreement in the future. Without limiting Authority's rights under any other provision in this Agreement, it is agreed that no receipt of moneys by Authority from the Manager after the termination in any way of the Term, or of the Manager's right of possession hereunder, or after the giving of any notice, shall reinstate, continue, or extend the Term or affect any notice given to the Manager prior to the receipt of such moneys. Without limiting the Manager's rights under any other provision in this Agreement, it is agreed that no receipt of moneys by the Manager from Authority after the termination in any way of the Term or after the giving of any notice shall reinstate, continue, or extend the Term or affect any notice given to Authority prior to the receipt of such moneys.

**20.7 Recordation of Agreement.** Authority shall record this Agreement in the Register's Office of Davidson County, at its cost and expense.

**20.8 Governing Law; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The parties hereby agree that any suit, action, or proceeding may be instituted with respect to this Agreement in any federal or state court in Davidson County, Tennessee. The parties hereby consent to in personam jurisdiction of such courts and irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of forum, or the jurisdiction of such courts, or from the execution of judgments resulting therefrom.

**20.9 Sovereign Immunity.** The Manager acknowledges and agrees that the sovereign immunity of Authority shall not apply to this Manager, nor any subcontractor, agent, employee, or insurer of the Manager. Accordingly, neither the Manager nor any such subcontractor, agent, employee, or insurer shall plead the defense of sovereign immunity in any action arising out of the performance of or failure to perform any responsibility or duty of the Manager under this Agreement.

**20.10 Limitations on Legal Requirements.** Notwithstanding anything to the contrary contained herein, the parties hereto hereby acknowledge and agree that the power and authority to adopt, rescind, or amend laws for Nashville and Davidson County resides with the Metropolitan County Council and that nothing contained herein shall (i) in any way obligate the Metropolitan County Council to adopt, rescind, or amend applicable law, or (ii) subject Authority to any liability on account of the Metropolitan County Council's failure to adopt, rescind, or amend any applicable Law.

**20.11 Article Headings.** The headings of Articles are for convenience only and do not limit, expand, or construe the contents of the Articles.

**20.12 Exhibits.** Authority and the Manager hereby acknowledge and agree that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

**20.13 Estoppel Certificates.** The Manager and Authority agree that they shall, at any time and from time to time upon not less than thirty (30) days' prior request by the other, executed, acknowledge, and deliver to the other, or to such other parties as may be designated by the other, a statement in writing signed by the applicable party certifying to the extent true and ascertainable: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement as modified is in full force and effect and identifying the modifications); (ii) the dates to which all payments and other charges due hereunder have been paid; (iii) that, so far as the applicable party knows, the other party is not in default under any provision of this Agreement, or, if in default, the nature thereof in detail; (iv) Manager that, so far as the applicable party knows, there are no offsets or claims to any amounts owed hereunder to such party; (v) that there are no actions, whether voluntary or otherwise, pending against the applicable party under the bankruptcy laws of the United States or any state thereof; and (vi) such other matters as may be reasonably requested by the requesting party.

**20.14 Intentionally Left Blank.**

**20.15 Time of the Essence.** Time is of the essence as to this Agreement and all provisions hereof.

**20.16 Anti-discrimination Clause.** The Manager shall not discriminate on the basis of race, color, political, or religious opinion or affiliation, creed, age, physical or mental handicap, sex, marital status, ancestry, national origin, or sexual preference/orientation. The Manager shall comply with all applicable laws pertaining to discrimination in employment, unlawful employment practices, and affirmative action.

**20.17 Remedies Cumulative.** No reference to any specific right or remedy shall preclude either party from exercising any other right or from having other remedy or from maintaining any other action to which it would otherwise be entitled at law or in equity.

**20.18 Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture, or any association between Authority and the Manager. It is agreed that all persons provided by the Manager to perform the obligations of the Manager contemplated hereby are not employees or agents of Authority. The Manager acknowledges that the Manager's employees and agents shall not, by reason of this Agreement or by reason of the performance of any services in connection with the satisfaction of the Manager's obligations hereunder, be considered employees of, or entitled to any employee benefits of, Authority.

**20.19 Accord and Satisfaction.** Neither the acceptance by either party of a lesser amount than any amount herein required to be paid, nor any endorsement or statement on a check or an instrument accompanying any payment shall be deemed an accord and satisfaction, and either party may accept any such check or payment without prejudicing such party's right to recover all outstanding amounts due under this Agreement and pursue all remedies available hereunder at law or in equity.

**20.20 Attornment; Non-Disturbance.** In the event the liens of any mortgages, deeds of trust, or indentures are foreclosed for any reason or in the event Authority's rights shall be terminated for any reason such that Authority cannot or will not perform Authority's obligations under this Agreement and any beneficiary or holder (or purchaser of the interests thereof) (the "Successor") succeeds to the interest of Authority under this Agreement, then the Manager shall be bound to such Successor under all of the terms of this Agreement for the balance of the Term remaining with the same force and effect as if such Successor was Authority under this Agreement. Provided the Successor agrees in writing to comply with this Agreement after it becomes a Successor and not to disturb Manager's use of the Arena except in accordance with the terms of this Agreement, the Manager hereby agrees to and does hereby attorn to such Successor, such attornment to be effective and self-operative, without the execution of any further instrument on the part of the parties hereto, or their successors or assigns, immediately upon the Successor succeeding to the interests, rights, and obligations of Authority hereunder.

**20.21 Attorneys' Fees.** If either Authority or the Manager commences or engages in any legal action against the other party which arises out of or in connection with this Agreement, each party shall be responsible for its own attorneys' fees in connection therewith.

**20.22 Interpretation and Construction.** Each of the parties has agreed to the use of the particular language of the provisions of this Agreement, and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided. The terms defined in Article 1.2 or elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the masculine, feminine, and neuter forms. All references to Articles, Sections, and Paragraphs shall be deemed references to Articles, Sections, and Paragraphs of this Agreement, unless the context requires otherwise. All references herein to Annexes shall be deemed to be references to the Exhibit(s) attached to this Agreement. The terms "Agreement", "hereof", "hereunder", and similar expressions refer to this Agreement as a whole and not to any particular Article, Paragraph, or other portion hereof and include any agreement supplemental hereto.

In Witness Whereof, the parties have executed this Agreement as of the date and year set forth above.

**THE SPORTS AUTHORITY OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY**

BY: 

TITLE: Chair

BY: 

TITLE: SAC

**MID-ICE, LLC**

BY: 

TITLE: COO

**Exhibit A**  
**Description of Land**



1/L2.03

L2.02

2/L2.03

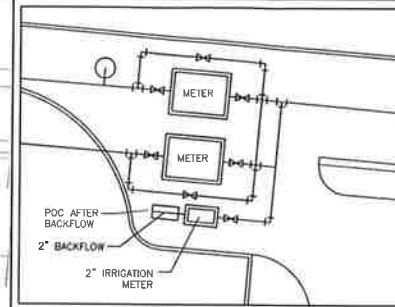
L2.01

POINT OF CONNECTION  
SEE ENLARGEMENT THIS  
SHEETTHIS MATCH PATTERN  
REPRESENTS DRIP  
IRRIGATION

EXISTING WALL ACCESS ROAD (PRIVATE)

CP-12758  
A  
PKNNOTE:  
IRRIGATION MAINLINE ROUTING IS  
DIAGRAMMATIC ONLY. CONTRACTOR TO  
ROUT ALL MAINLINES AND LATERALS  
WITHIN PROPERTY BOUNDARIES AND  
THROUGH SLEEVES AND BEDS.

TENNESSEE ONE-CALL SYSTEM

BEFORE YOU DIG CALL  
1-800-351-1111SEE L2.01-L2.03 FOR IRRIGATION PLANS  
SEE L2.10 FOR IRRIGATION NOTES AND SCHEDULE  
SEE L2.20-L2.21 FOR IRRIGATION DETAILS

POC ENLARGEMENT

1"=10'-0"

SEE ENLARGEMENT ON UTILITY  
SHEET C5.01 FOR WATER  
ASSEMBLY.

## LIABILITY STATEMENT:

THE PURPOSE OF THIS IRRIGATION PLAN IS TO PROVIDE A PHYSICAL LAYOUT OF IRRIGATION EQUIPMENT TO ASSIST THE CONTRACTOR IN ACCURATELY ESTIMATING THE COSTS TO BID THE SPRINKLER SYSTEM. THE DESIGN INTENT IS TO PROVIDE THE CONTRACTOR WITH A DIAGRAMMATIC LAYOUT OF SPRINKLER EQUIPMENT, WHICH WILL PROVIDE ADEQUATE WATER COVERAGE FOR THE LANDSCAPE MATERIALS WITHIN THE SCOPE OF WORK UNDER THIS CONTRACT. THESE PLANS AND THE MATERIALS SPECIFIED ARE SUBJECT TO CHANGE WITHOUT NOTICE TO THE CONTRACTOR. PRIOR TO BIDDING THIS CONTRACT THE CONTRACTOR WILL VERIFY ALL IRRIGATION MATERIAL MODEL NUMBERS, DIMENSIONS, COMPATIBILITY OF COMPONENT ASSEMBLIES, MAINLINE, AND ZONE HYDRAULICS, ELECTRICAL COMPONENTS, WIRING, ALL SLEEVES, WATER AND ELECTRICAL SOURCE'S, PRESSURE AND APPLICABLE SITE CONDITIONS, WHICH MAY ADVERSELY AFFECT EITHER THE COST OR PERFORMANCE OF THIS SPRINKLER SYSTEM. IF A CONFLICT IS FOUND THE CONTRACTOR WILL NOTIFY THE OWNER IN WRITING AND WILL NOT BID THE WORK UNTIL THE OWNER HAS RESOLVED THE CONFLICT AND ISSUED IN WRITING A "NOTICE TO PROCEED". IF A CONFLICT IS FOUND AFTER THE CONTRACT HAS BEEN SIGNED THE CONTRACTOR WILL RESOLVE THE CONFLICT AT HIS OWN EXPENSE AND AT NO ADDITIONAL COST TO THE OWNER. CHANGE ORDERS WILL NOT BE ACCEPTED FROM THE CONTRACTOR TO INCREASE THE CONTRACT AMOUNT AFTER THE CONTRACT HAS BEEN SIGNED FOR THE AREA WITHIN THE SCOPE OF WORK UNDER THIS CONTRACT. SLEEVING MAY OR MAY NOT BE SHOWN OR CALLED OUT ON THESE PLANS. IT REMAINS THE RESPONSIBILITY OF THE CONTRACTOR TO INSTALL ALL SLEEVES NECESSARY WHEREVER THEY MAY BE REQUIRED. THE IRRIGATION MATERIALS USED ON THIS PLAN HAVE BEEN CAREFULLY SELECTED FOR QUALITY, DURABILITY, AND LONGEVITY AND HAVE BEEN HYDRAULICALLY ENGINEERED INTO THIS PROJECT. CONSEQUENTLY THESE MATERIALS ARE NOT SUBJECT TO CHANGE WITHOUT WRITTEN APPROVAL FROM THE OWNER. PRIOR TO STARTING THE WORK THE CONTRACTOR WILL SUBMIT TO THE OWNER A CATALOG CUT SHEET, DESCRIPTION, QUANTITY AND COST OF EACH ITEM TO BE INSTALLED. THE CONTRACTOR WILL NOT START THE WORK UNTIL THE OWNER HAS APPROVED THE MATERIAL LIST AND ISSUED A WRITTEN "NOTICE TO PROCEED". THE CONTRACTOR MAY SUBMIT A WRITTEN REQUEST TO THE OWNER FOR A "MATERIAL SUBSTITUTION" IF A PRODUCT HAS BECOME OBSOLETE OR HAS A LEAD TIME THAT WILL DELAY THE PROJECT. THE CONTRACTOR WILL INCLUDE IN THE REQUEST FOR MATERIAL SUBSTITUTION THE COST OF THE ITEM SPECIFIED WITH THE COST OF THE ITEM BEING REQUESTED FOR SUBSTITUTION. IF THE COST OF THE PROPOSED ITEM FOR SUBSTITUTION IS LESS THAN THE ITEM SPECIFIED THE CONTRACTOR WILL DEDUCT THAT AMOUNT FROM THE CONTRACT. IF THE COST OF THE PROPOSED ITEM FOR SUBSTITUTION IS MORE THAN THE ITEM SPECIFIED THE CONTRACTOR MAY SUBSTITUTE THE ITEM AT NO ADDITIONAL EXPENSE OR COST TO THE OWNER. THE INTENT IS, THE CONTRACTOR WILL NOT BE ALLOWED TO MAKE HIGHER PROFITS BY SUBSTITUTING INFERIOR OR LESS EXPENSIVE PRODUCTS. PRIOR TO COMPLETION OF THE WORK THE CONTRACTOR WILL TURNOVER TO THE OWNER ALL "ORIGINAL INVOICES" SO THE OWNER CAN VERIFY THE "DATE OF PURCHASE" TO VALIDATE THE WARRANTY TIME LIMIT. PRODUCTS INSTALLED THAT WERE NOT APPROVED BY THE OWNER OR ON THE ORIGINAL PLANS WILL BE ORDERED REMOVED AND REPLACED AT THE EXPENSE OF THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER. FINAL PAYMENT MAY BE WITHHELD UNTIL ALL PRODUCTS SPECIFIED HAVE BEEN PROPERLY INSTALLED.

SCALE: 1" = 40'

**LOSE**  
**DESIGN**  
 SPACES FOR LIFE.

 BELLEVUE COMMUNITY CENTER  
 AND PREDS ICE CENTER

METRO GENERAL SERVICES

NASHVILLE

TENNESSEE

## SUBMITTALS/REVISIONS

NO.	DATE	DESCRIPTION
1	07/20/2018	ISSUED FOR PERMIT
2	07/20/2018	REVISIONS TO PERMIT
3	07/20/2018	REVISIONS TO PERMIT
4	07/20/2018	REVISIONS TO PERMIT
5	07/20/2018	REVISIONS TO PERMIT
6	07/20/2018	REVISIONS TO PERMIT
7	07/20/2018	REVISIONS TO PERMIT
8	07/20/2018	REVISIONS TO PERMIT
9	07/20/2018	REVISIONS TO PERMIT
10	07/20/2018	REVISIONS TO PERMIT

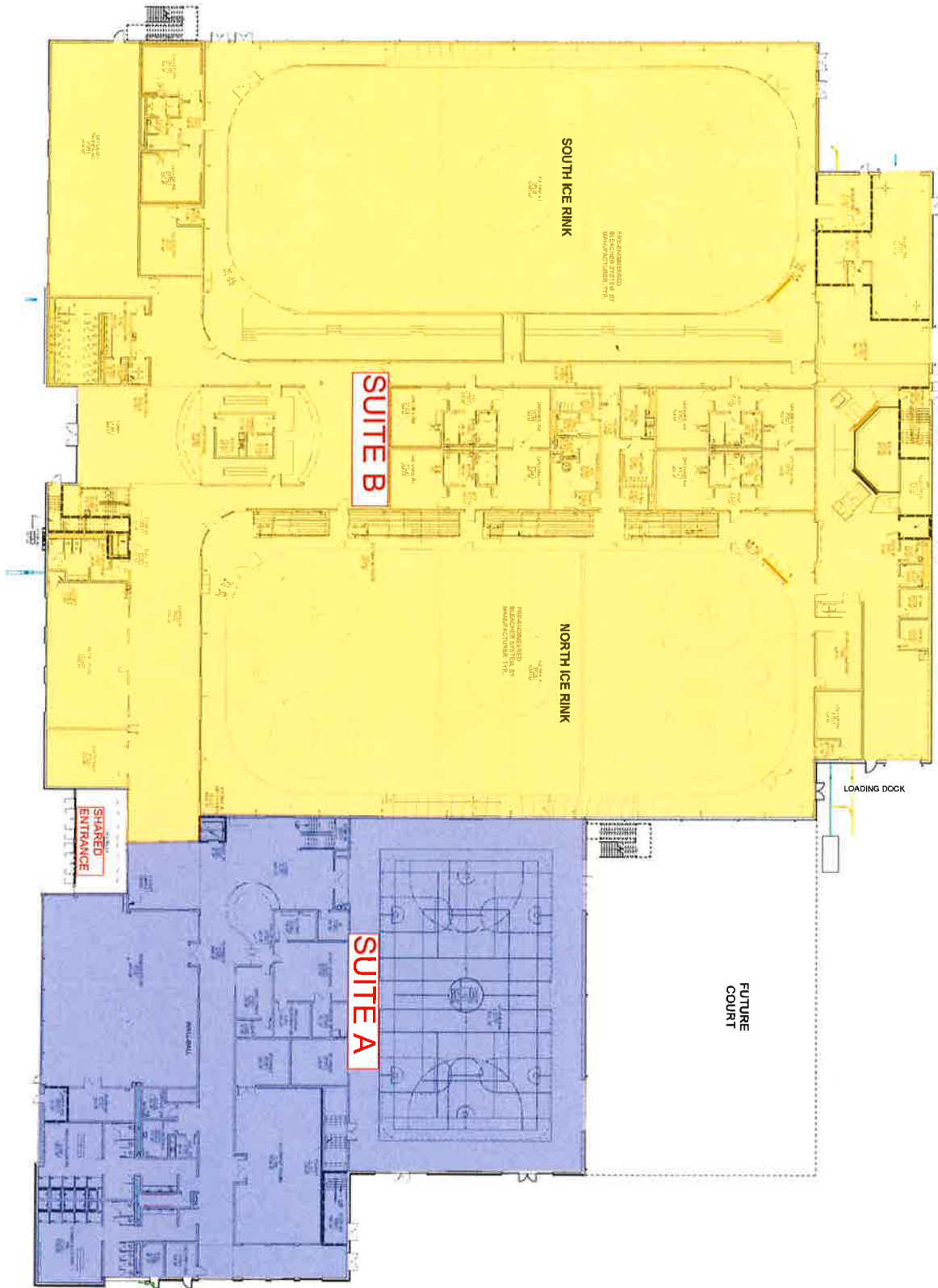
## SHEET TITLE:

IRRIGATION PLAN  
SHEET INDEX

PROJECT NO.	DATE
17204	07/20/2018
DRAWN BY	CHECKED BY
JWS	JWS
DESIGNED BY	DATE
JWS	07/20/2018
SHEET NO.	

L2.00





PROJECT NO.	1001
DATE	10.13.2018
BY	DA
SCALE	1/8" = 1'-0"
PROJECT NO.	1001
DATE	10.13.2018
BY	DA
SCALE	1/8" = 1'-0"

OVERALL FIRST FLOOR PLAN

A2.1

## BELLEVUE COMMUNITY CENTER AND PREDS ICE CENTER

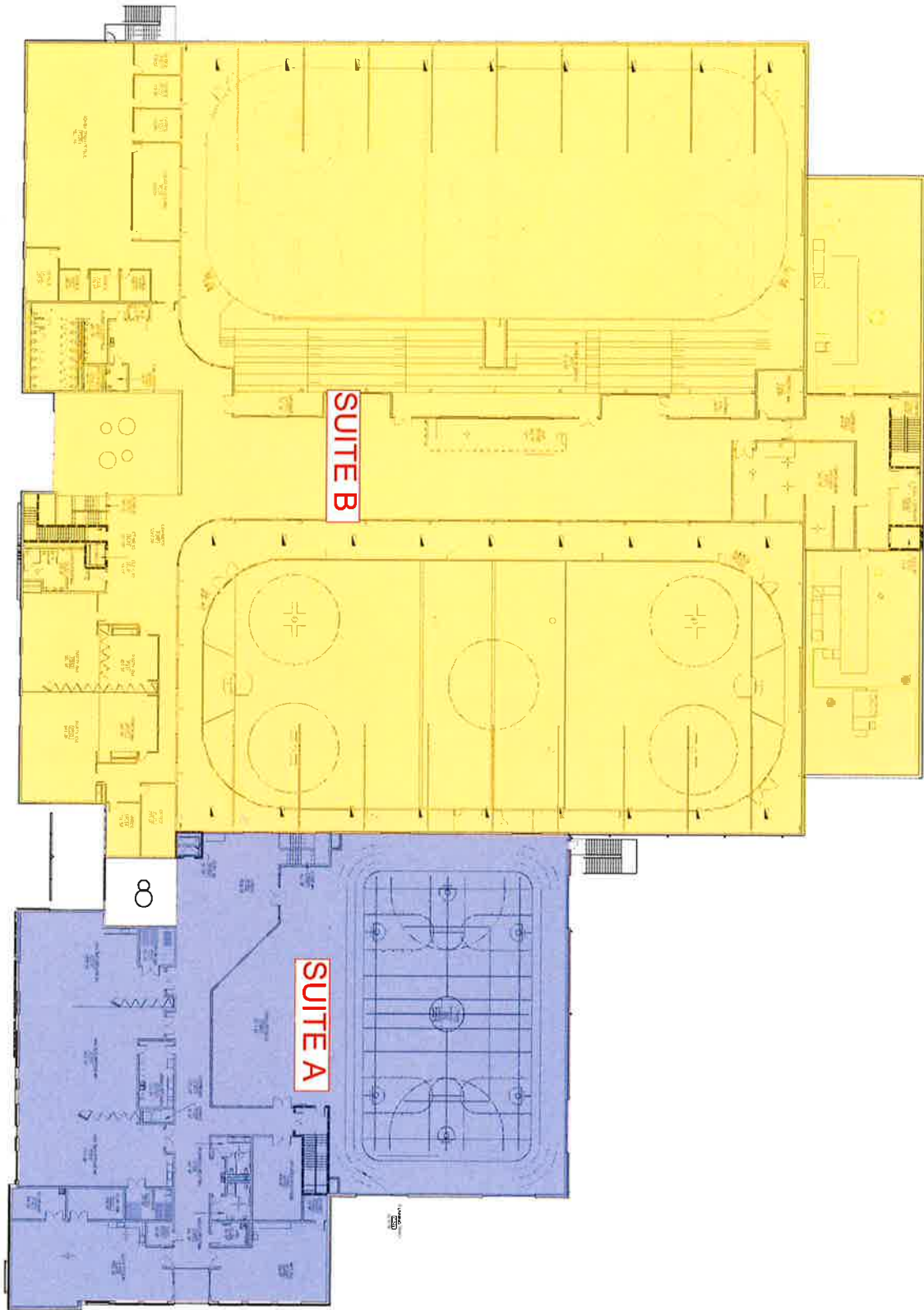
PREPARED FOR:  
METRO GENERAL SERVICES

NASHVILLE

TENNESSEE



**LOSE**  
**DESIGN**  
SPACES FOR LIFE.



# BELLEVUE COMMUNITY CENTER AND PRED'S ICE CENTER

NASHVILLE      PREPARED FOR: METRO GENERAL SERVICES      TENNESSEE



**LOSE**  
**DESIGN**  
SPACES FOR LIFE.

OVERALL  
SECOND FLOOR  
PLAN

A2.2.

**Exhibit B**  
**Authority's Equipment**

<b>Zambonis</b>	<b>\$ 223,134.21</b>
(2) Zamboni	\$ 215,671.00
(1) Electric Edger	\$ 6,900.00
Oil Filter (4)	\$ 40.25
Blade Bolts (10)	\$ 44.28
Terry Cloth	\$ 101.20
Squeegee	\$ 109.25
Impeller	\$ 225.40
Chain	\$ 42.84
 <b>Signage</b>	 <b>\$ 134,665.56</b>
(4) Backlit Signs - East	\$ 43,185.58
(4) Backlit signs - North	\$ 43,185.58
Main Entrance Sign	\$ 37,562.74
Permits	\$ 460.00
MISC.	\$ 5,750.00
Pred Head - West Wall	\$ 4,521.66
 <b>Concession/ Bar</b>	 <b>\$ 51,736.20</b>
General Services	\$ 28,750.00
Portable Smoker	\$ 4,025.00
Smallwares	\$ 18,961.20
 <b>Office Furniture</b>	 <b>\$ 73,984.10</b>
Office Furniture	\$ 73,409.10
Safe	\$ 575.00
 <b>Merchandise Store build out</b>	 <b>\$ 34,074.50</b>
Skate Sharpener	\$ 20,700.00
Pneumatic Riveter	\$ 5,750.00
Bench Riveter	\$ 1,035.00
Shipping	\$ 2,300.00

Figure Skating Sharpener	\$ 4,289.50
<b>Rental Skates</b>	<b>\$ 61,079.95</b>
Hockey Skates	\$ 30,029.95
Figure Skates	\$ 31,050.00
<b>Computer equipment</b>	<b>\$ 86,020.00</b>
RMS	\$ 27,600.00
Computers (15)	\$ 25,875.00
Ipads (2)	\$ 920.00
Router	\$ 10,350.00
Wireless Router	\$ 1,725.00
Server	\$ 17,250.00
Printer (2)	\$ 2,300.00
<b>Phones</b>	<b>\$ 9,200.00</b>
Switch	\$ 9,200.00
<b>Sports Equipment</b>	<b>\$ 11,500.00</b>
<b>First Aid/AED</b>	<b>\$ 5,622.35</b>
(4) AEDs	\$ 3,450.00
AED storage boxes (4)	\$ 803.85
(1) Training tables	\$ 1,368.50
<b>TV's</b>	<b>\$ 34,346.05</b>
48" LED TV (18)	\$ 11,500.00
55" LED TV (4)	\$ 4,600.00
Brackets (22)	\$ 5,405.00
Install (22)	\$ 1,035.00
DVD/Blue Ray (4)	\$ 460.00
Lighting Package	\$ 11,346.05
<b>Ice Paint/Paint Equipment</b>	<b>\$ 7,837.25</b>
Mixing Tank	\$ -
Boom	\$ 894.70
250' of 1" Hose	\$ 718.75
Hose Reel	\$ 862.50
White Paint	\$ 2,318.40
Blue Paint	\$ 112.70
Red Paint	\$ 112.70
Goal Crease Paint	\$ 131.10

Preds Blue	\$	203.55
Ford Blue	\$	67.85
Gold	\$	1,357.00
Center line lay in	\$	770.50
Brushes and tools	\$	287.50

<b>Stanchions</b>	<b>\$</b>	<b>2,160.85</b>
Tensabarrier (20)	\$	2,160.85

<b>Trash Cans</b>	<b>\$</b>	<b>6,668.85</b>
35 Gallon Trash Can (30)	\$	6,668.85

<b>Zambodi Blades</b>	<b>\$</b>	<b>2,162.00</b>
(8) Blades	\$	2,162.00

<b>Operations Radios</b>	<b>\$</b>	<b>10,666.25</b>
Motorola Radios (15)	\$	10,091.25
Charging Base (2)		

FCC Fee	\$	575.00
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<b>Operations Hand Tools</b>	<b>\$</b>	<b>18,181.20</b>
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Circular saw Blade (10)	\$	114.66
Reciprocating Saw blade (2)	\$	68.93
24" Squeegee (4)	\$	119.51
Snow Shovel (4)	\$	147.06
20 Gal Air Compressor	\$	228.85
Husky Tool Chest	\$	687.70
16' Werner ladder	\$	701.50
8' werner ladder	\$	154.10
Hand Truck	\$	228.85
Pallet Jack	\$	435.85
Wet/Dry Shop Vac	\$	103.50
Dewalt Circular Saw	\$	159.85
dewalt Charger (4)	\$	552.00
Staple Gun (2)	\$	68.93
Dewalt Batteries (4)	\$	455.40
Dewalt Reciprocating Saw	\$	228.85
Tape Measure (2)	\$	34.50
Drill Bit Set	\$	23.00
Cordless drill set (2)	\$	342.70
infrared Thermometer (2)	\$	161.00
Plier Set (2)	\$	46.00
Channellock (2)	\$	49.45
Crescent Wrench (2)	\$	46.00
Screw Driver Set	\$	23.00
Mechanics tool set	\$	228.85
Floor Jack	\$	460.00
MISC	\$	5,750.00
Scissor Lift	\$	6,744.75

<b>Training Equipment</b>	<b>\$</b>	<b>22,234.00</b>
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(3) Squat Racks	\$	2,997.00
(3) Treadmills	\$	4,500.00
(3) Exercise Bikes	\$	2,097.00
(3) Bench racks	\$	2,340.00
(2) Free weight Racks	\$	1,248.00
(3) Battle Ropes	\$	687.00
Power Plyo Boxes	\$	130.00
TrX Cables	\$	220.00
(3) Row Machines	\$	3,600.00
Kettle Bells	\$	1,000.00
Weight Set - Plates	\$	3,415.00

<b>Scoreboards</b>	\$ 45,000.00
Eversan Scoreboards (2)	\$ 51,750.00

Contingency (5%)	\$ 51,750.00
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Sub Total	<b>\$ 892,023.33</b>
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Tax	<u>\$ 82,512.16</u>
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Total FFE Budget	<u><b>\$ 974,535.48</b></u>
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**Exhibit C**  
**Reserved**



## **Exhibit D**

### **Rink Development Benefits**

The Ice Rink will provide tremendous benefits for the local ice-skating community and beyond. The creation of this facility provides an increase in ice skating related opportunities for local residents and visitors of all skill levels and ages with expanded leagues and classes, while new physical fitness programs geared towards individuals, groups, and corporations will benefit the Davidson County community at large. Tournaments and special events will be hosted at this new centrally-located Ice Rink and will generate area economic development with increase in demand for local lodging, dining, shopping and entertainment, as well as creation of new jobs.

Anticipated recreational opportunities, community involvement, and economic impact to the Davidson County include:

- Monthly Get Out and Learn! (G.O.A.L!) free beginner hockey program to introduce the sport to the families of Davidson County.
  - A projected 800-1200 families with kids ages 5-8 will be introduced to ice hockey for free annually; with significant participation from Davidson County residents.
- Continuing Learn-to-Skate group class series offered to local and surrounding communities.
- Recreational skating opportunities for youth, adults, seniors, and people with disabilities.
  - Adaptive recreation facility to provide sled hockey program (Sled Preds) for disabled individuals, such as Wounded Warriors.
  - Eight hours of ice time per month will be donated for Davidson County non-profit use.
- Home rink area for Metro sporting leagues: Rec Hockey, Nashville Jr. Predators travel hockey, High School, College Club Teams, Adult Hockey, Figure Skating Club, Special Needs Hockey, and Broomhall.
  - Manager, in conjunction with the Nashville Predators, will subsidize and/or provide limited scholarships to Davidson County residents for league participation.
- Academic curriculum for Metro Nashville Area Schools.
  - Elementary and Middle School physical fitness program with an ice skating field trip.
  - High school aged science of hockey curriculum.
- Non-hockey activities, such as figure skating, broomball, and curling.
- Valuable location for the community to gather and socialize: public skate sessions, birthday parties, meeting and conference rooms, group and corporate outings.
  - An average ninety minute public skate can bring 200+ families to the area.
- Annual activities and programs, such as holiday shows, summer camps, festivals, exhibitions, and community events.
- Significant economic impact to area restaurants, hotels, retailers, and entertainment venues from hockey tournaments and figure skating exhibitions.

- Manager, in conjunction with the Nashville Predators, will develop a job placement initiative with Davidson County for co-op, full time, part-time jobs, and job training internship opportunities.

In connection with this Agreement, a value of no more than Fifty Thousand Dollars (\$50,000) of the aforementioned assets, benefits and services will be provided by Manager for Davidson County residents in each Operating Year of the Term which can be provided either at the FIC or the Ice Rink. As provided in Article 5.4 of the Agreement, Manager shall make the Ice Rink and/or FIC (in Manager's discretion) available for Civic Events as provided herein.

**Exhibit E**  
**Declaration of Covenants, Restrictions and Easements**  
**For**  
**One Bellevue Place – Civic Tract**

When Recorded Return To:  
Heather Townsend  
National Commercial Services  
First American Title Insurance Company  
Six Concourse Parkway, Ste. 2000  
Atlanta, GA 30328  
File No: NCS 766415C

This Instrument Prepared By:  
Alexander Ricks PLLC  
4601 Park Road, Suite 580  
Charlotte, North Carolina 28209  
Attn: Jon Goldberg

Davidson County	REL
Recvd: 08/10/17 14:27	8 pgs
Fees: 47.00 Taxes: 0.00	
20170810-0082119	

### TERMINATION AGREEMENT

~~July~~ <sup>August</sup> THIS TERMINATION AGREEMENT ("Termination") is made as of the 9 day of ~~July~~, 2017 ("Effective Date") by BELLEVUE REDEVELOPMENT ASSOCIATES, LP, a Delaware limited partnership ("Bellevue").

#### RECITALS:

A. As of the Effective Date, Bellevue is the sole owner and holder of fee simple title to certain real property located in Davidson County, Tennessee, which real property is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property").

B. The Property is encumbered by that Declaration of Covenants, Restrictions and Easements for Civic Tract – One Bellevue Place dated December 31, 2015, and recorded in the Davidson County Register as Instrument Number 20160105-0000934 (the "Civic Declaration").

C. The Property also is encumbered by certain deed restrictions described in that Quitclaim Deed dated December 31, 2015, and recorded in the Davidson County Register as Instrument Number 20160105-0000935 (collectively, "Restrictions").

D. Bellevue owns Lots 1 (other than the portion thereof shown as Lot 11 on the Resubdivision Plat of Lot 1), 3, 4, 8 and 9 as shown on the Plat. As used herein, (i) "Plat" shall mean the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C.) of record in Instrument No. 20151218-0127344, R.O.D.C.; and (ii) "Resubdivision Plat of Lot 1" shall mean that certain plat titled "Resubdivision Plat of Lot 1 One Bellevue Place" of record as Document Number 20161020-0111109 in the Register of Deeds Office for Davidson County, Tennessee.

E. Bellevue desires to terminate the Civic Declaration and Restrictions as of the Effective Date.

NOW, THEREFORE, in consideration of the recitals and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Bellevue hereby declares as follows:

1. The foregoing Recitals are incorporated herein by reference.

2. Bellevue does hereby, effective as of the Effective Date, terminate the Civic Declaration and the Restrictions.

3. This Termination is intended to run with the land and is binding on Bellevue, as the owner of the Property, and all successors and assigns that may own the Property or have an interest therein.

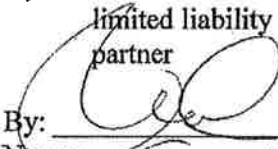
4. As of the Effective Date, none of the Restrictions shall be binding upon the Property and ownership of the Property shall be and hereby is free and clear of the Restrictions and this Termination shall inure for the benefit of the Property and run with the land.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Bellevue has executed this Termination as of the day and year first above written.

**BELLEVUE REDEVELOPMENT  
ASSOCIATES, LP,**  
a Delaware limited partnership

By: Branch Retail GP, LLC, a Georgia  
limited liability company, its general  
partner

By:   
Name: Terry M. Hampel  
Title: Authorized Signatory

STATE OF Georgia )  
COUNTY OF Fulton )

Before me, a Notary Public in and for said County and State, personally appeared Terry M. Hampel, the Authorized Signatory of Branch Retail GP, LLC, a Georgia limited liability company, general partner of Bellevue Redevelopment Associates, LP, a Delaware limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Authorized Signatory he signed and delivered the said instrument pursuant to authority given by the limited liability company as his/her free and voluntary act, and as the free and voluntary act and deed of the limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal this 28<sup>th</sup> day of July, 2017.

  
Notary Public

My commission expires:  
October 24, 2017



**IN WITNESS WHEREOF**, the undersigned, as the owner of Lot 2 as shown on the Plat, hereby consents to the termination of the Restrictions as of the day and year first above written.

**CRESCENT BELLEVUE, LLC,**  
a Delaware limited liability company

By: Crescent Bellevue Joint Venture, LLC,  
a Delaware limited liability company,  
its Member

By: Crescent Bellevue Joint Venture Member, LLC,  
a Delaware limited liability company,  
its Administrative Member

By: Crescent Bellevue Member, LLC,  
a Delaware limited liability company  
its Managing Member

By: Crescent Communities, LLC,  
a Georgia limited liability company,  
its Manager

By:  (SEAL)

Name: Benjamin Collins  
Title: Senior Vice President

STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

Before me, a Notary Public in and for said County and State, personally appeared Benjamin Collins, a Senior Vice President of Crescent Communities, LLC, a Georgia limited liability company, manager of Crescent Bellevue Member, LLC, a Delaware limited liability company, managing member of Crescent Bellevue Joint Venture Member, LLC, a Delaware limited liability company, administrative member of Crescent Bellevue Joint Venture, LLC, a Delaware limited liability company, a member of Crescent Bellevue, LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such BENJAMIN COLLINS s/he signed and delivered the said instrument pursuant to authority given by the limited liability company as his/her free and voluntary act, and as the free and voluntary act and deed of the limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal this 1<sup>st</sup> <sup>AUGUST</sup> day of ~~July~~, 2017.

KARA BINKLEY  
Notary Public

My commission expires:

2/23/2020





IN WITNESS WHEREOF, the undersigned, as the owner of Lot 11 as shown on the Resubdivision Plat of Lot 1, hereby consents to the termination of the Restrictions as of the day and year first above written.

**HARMONY HOSPITALITY, LLC,**  
a Tennessee limited liability company

By: [Signature]  
Name: AMIT M. PATEL  
Title: PRESIDENT

STATE OF Tennessee )  
COUNTY OF Davidson )

Before me, a Notary Public in and for said County and State, personally appeared Amit Patel, the president of Harmony Hospitality, LLC, a Tennessee limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such president, s/he signed and delivered the said instrument pursuant to authority given by the limited liability company as his/her free and voluntary act, and as the free and voluntary act and deed of the limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal this 31<sup>st</sup> day of July, 2017.

[Signature]  
Notary Public

My commission expires:  
01/01/2020



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF PROPERTY**

Lot 3 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.

## True Copy Certification

I, Heather Townsend, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Heather Townsend

Signature

State of Georgia

County of Fulton

Personally appeared before me, <sup>Lynn</sup>Deborah Goodman, a notary public for this county and state, Heather Townsend who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

Deborah Lynn Goodman

Notary's Signature

My Commission Expires \_\_\_\_\_  
Notary' Seal (if on paper)



**This Instrument Prepared By:**

**Troutman Sanders LLP (J. Goldberg)  
301 S. College Street, 34<sup>th</sup> Floor  
Charlotte, NC 28202**

**When Recorded Return To:  
Heather Townsend  
National Commercial Services  
First American Title Insurance Company  
Six Concourse Parkway, Ste. 2000  
Atlanta, GA 30328  
File No: NCS 769760**

<b>Davidson County</b>	<b>DEEDMAST</b>
<b>Recvd: 11/03/16 13:34</b>	<b>34 pgs</b>
<b>Fees:172.00 Taxes:0.00</b>	
<b>20161103-0116535</b>	

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND  
EASEMENTS  
FOR  
ONE BELLEVUE PLACE**

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
ONE BELLEVUE PLACE**

This DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ONE BELLEVUE PLACE (this "**Declaration**") is dated effective as of October 28, 2016 and made by **BELLEVUE REDEVELOPMENT ASSOCIATES, LP**, a Delaware limited partnership ("**Bellevue**").

**RECITALS**

A. As of the date hereof, Bellevue is the owner of the real property described on Exhibit A attached hereto (the "**Property**"). The Property is being developed by Bellevue as permitted under applicable local zoning ordinances as a multi-use development that may include (i) a retail area, (ii) office buildings, (iii) a hotel, and (iv) such other uses as may be determined from time to time by Bellevue in accordance with this Declaration.

B. Bellevue desires to preserve the values and amenities of the Property and to this end desires to subject the Property to the covenants, conditions, restrictions and easements hereinafter set forth, each and all of which is and are for the benefit of the Property and each current and future owner thereof and burden the Property as set forth herein.

**DECLARATION**

**NOW, THEREFORE**, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bellevue, by this Declaration, does declare the Property is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges, liens and agreements set forth in this Declaration which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, its heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
GENERAL**

1.1 **Definitions.** The following words or phrases, when used in this Declaration shall have the following meanings:

(a) "**Common Areas**" shall mean all areas depicted on the Site Plan and labeled "Common Area". Developer hereby reserves the right to relocate the Common Areas from time to time, and no party may relocate Common Areas without the prior written consent of Developer.

(b) "**Declaration**" shall mean this Declaration of Covenants, Restrictions and Easements for One Bellevue Place and any amendment or supplement thereto enacted in accordance with the provisions hereof.

(c) "**Designated Maintenance Items**" shall mean the following items that are located within the Common Areas or within the rights-of-way within the Common Areas

(including property in medians and entrances, but excluding any improvements maintained by the appropriate governmental authority):

- (i) Private streets, driveways, roads and alleys, bridges and public streets and roads, if any, to the extent such public streets and roads are not maintained by the appropriate governmental authority.
- (ii) Plants (including, but not limited to, trees, "tree save" areas, shrubs, flowers, ground cover and grass).
- (iii) Light poles, fixtures, bulbs, traffic signals, wiring and all equipment related to the use thereof.
- (iv) Traffic signs, parking signs, directional/wayfinding signs, warning signs, and other guide/informational signs.
- (v) Sprinkler and irrigation systems (including water meter vaults and water meters used in connection with such systems).
- (vi) Fences, decorative walls, retaining walls, sitting walls, sidewalks, steps and walking paths.
- (vii) Outdoor furniture and benches.
- (viii) Flag poles, flags, banners and seasonal decorations.
- (ix) Signage relating to the operation and identification of the Property.
- (x) Sidewalks.
- (xi) Storm water drainage lines, detention ponds, drainage easements, water lines, sewer lines and other utility lines and easements and all fixtures related thereto not maintained by the appropriate governmental authority.
- (xii) Water Quality Ponds.
- (xiii) Lakes, ponds, streams, fountains and other water amenities, including, but not limited to, pumps, pipes, drains, drainage, water and electrical lines, fountain parts, fountain lights or other decorative lighting within a water amenity, water jets, filters, chlorinators, nozzles, weirs, switches and related equipment, easements or housings, gravel, stone or concrete beds, walls, dams and other structural housing for water containment or detention and directional control, swings and gazebos.
- (xiv) Entry features, including, without limitation, monument signs, ponds, fountains and landscaping.

Notwithstanding the foregoing, this Declaration imposes no obligation on Developer to construct or install any of the Designated Maintenance Items.

(d) **"Developer"** shall mean Bellevue, and any other successor (each, a **"Successor Developer"**) which owns fee simple title to the majority of Lot 1 (as described on Exhibit A

attached hereto) from time to time, including, without limitation, any Mortgagee that acquires title via foreclosure or deed-in-lieu of foreclosure.

(e) **"Hotel Parcel"** shall mean that portion of the Property which is described on Exhibit A-2 attached hereto.

(f) **"Improvements"** shall mean any and all physical structures, facilities, alterations or changes of any type or nature made to or upon any portion of the Property from time to time, including, without limitation, buildings, parking lots, parking structures, roadways, driveways, ramps, loading areas, mechanical equipment, window coverings, signs, utilities, fences, antennae, walls, lawns, screens, landscaping, park areas, berming, hedges, trees, mass plantings, poles, grading changes, plazas, walkways, bridges, recreational facilities, exterior lighting facilities, drainage structures, curbs, retaining walls, grates, fountains, ponds and waterways.

(g) **"Owner"** shall mean each and every person or entity who is a record owner of a fee simple interest in a Parcel. If such Parcel is subject to a condominium, townhouse or other multi-owner regime, the owners' association representing such multi-owner regime, and not individual unit owners, shall be deemed the "Owner" thereof.

(h) **"Parcel"** shall mean a platted lot within the Property. The plural form of this term as used in this Declaration is **"Parcels."**

(i) **"Permittees"** shall mean (i) the Owners, (ii) any person or entity from time to time entitled to the use and occupancy of any portion of a building under an ownership right or any lease, sublease, license, concession, or other similar agreement, and (iii) the respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees of the Owners.

(j) **"Project"** shall mean the Property, together with the Improvements and anticipated Improvements on the Property.

(k) **"Property"** shall have the meaning set forth in the Recitals above.

(l) **"Site Plan"** shall mean the site plan attached hereto as Exhibit A.

(m) **"Subdivision Plat"** shall mean that certain Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C.) of record in Instrument No. 20151218-0127344, R.O.D.C.

(n) **"Water Quality Ponds"** shall mean that portion of the Property on which are located two "Future Stormwater Quality Ponds" or "Future Bioretention Water Quality Areas" as labeled on the Subdivision Plat or on the plat referenced on Exhibit A-2 attached hereto, or any other ponds located on the Property which Developer expressly permits in writing to be used for storm drainage purposes.

Other terms used in this Declaration are defined in various provisions contained herein.

1.2 Duties of the Developer Except as otherwise provided herein, the Developer shall operate, keep and maintain any Designated Maintenance Items which are installed by or on behalf of Developer and the Common Areas (including Designated Maintenance Items and Common Areas located on an Owner's Parcel) in a first class manner and in a clean and attractive condition at all times, ensuring that the Common Areas comply in all respects with governmental laws, codes, rules and regulations, including those which address fire and human health and safety (except to the extent that any non-compliance is caused by an Owner which is not Developer, in which event such Owner shall bring same into compliance at such Owner's cost and expense).

## ARTICLE 2 ASSESSMENTS

### 2.1 Annual Assessments.

(a) Lots 8 and 9. As to Lots 8 and 9 (as depicted on the Subdivision Plat), commencing on the date that third-party tenants have commenced paying rentals thereunder (the "Outparcel Date"), the Owner of Lots 8 and 9 hereby covenant and agree to pay Developer, or to an independent entity or agency which may be designated by the Developer to receive such monies, a fixed annual fee in an amount equal to Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for each fiscal year, per Lot (*i.e.*, the charge for each of Lot 8 and Lot 9 commences at \$2,500.00). Such annual assessment shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month and shall be delinquent if not paid by the tenth day of such month. Such annual assessment shall increase by the fixed amount of three percent (3%) per annum.

(b) Lot 4. As to Lot 4 (as depicted on the Subdivision Plat), commencing on the date that a final unconditional certificate of occupancy for the first building on Lot 4 has been issued by the Metropolitan Government of Nashville and Davidson County, Tennessee (the "Lot 4 Permit Date"), the Owner of Lot 4 hereby covenants and agrees to pay Developer, or to an independent entity or agency which may be designated by the Developer to receive such monies, a fixed annual fee in an amount to be determined by Developer in an amendment to this Declaration which is placed in the public land records (which amendment shall only require the consent and execution of Developer, notwithstanding any terms in this Declaration to the contrary). Following the conveyance by Developer of all or a portion of Lot 4, Developer may not subsequently amend this Section 2.1(b) without the written consent of the affected Owner(s).

(c) Hotel Parcel. As to the Hotel Parcel, commencing on the earlier of (i) the date that a final unconditional certificate of occupancy for the first building on the Hotel Parcel has been issued by the Metropolitan Government of Nashville and Davidson County, Tennessee or (ii) the date on which the Hotel Parcel commences business operations, the Owner of the Hotel Parcel hereby covenants and agrees to pay Developer, or to an independent entity or agency which may be designated by the Developer to receive such monies, a fixed annual fee in an amount equal to \$10,000.00 for each fiscal year. Such annual assessment shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month and shall be delinquent if not paid by the tenth day of such month. Such annual assessment shall increase by the fixed amount of three percent (3%) per annum.

(d) Lot 10. As to Lot 10 (as described on Exhibit A-3 attached hereto), commencing on the date that vertical construction has commenced on said Lot 10, the Owner of Lot 10 hereby covenants and agrees to pay Developer, or to an independent entity or agency which may be designated by the Developer to receive such monies, a fixed annual fee in an amount equal to



Three Thousand Eight Hundred and No/100 Dollars (\$3,800.00) for each fiscal year, per Lot (*i.e.*, the charge for Lot 10 commences at \$3,800.00). Such annual assessment shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month and shall be delinquent if not paid by the tenth day of such month. Such annual assessment shall increase by the fixed amount of two percent (2%) per annum.

(e) In the event any of the annual assessments are held or administered by an independent entity or agency, such independent entity or agency shall distribute any and all such assessments to Successor Developer promptly upon request of such Successor Developer, and the foregoing language shall be included in any contract or agreement between Developer and any such independent entity or agency.

2.2 Personal Obligation for Payment of Assessments. The annual assessments provided for in Section 2.1 shall be the personal and individual debt of the Owners. No Owner may exempt itself from liability for such assessments.

### ARTICLE 3 EASEMENTS

3.1 Access Easement. The Developer does hereby create, grant, convey, and confirm unto the Owner(s) of the Property, their successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement for pedestrian and vehicular ingress and egress over and across those portions of the Common Areas now or hereafter developed with driveways, walkways, or roadways for the flow of traffic around buildings for as long as such driveways, walkways and roadways are improved for such purpose. The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Property. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, all such portions of the Common Areas (except to the extent dedicated to a public authority) so that such Common Areas at all times are in good order, condition and repair and in a level and smooth condition, reasonably free of potholes and other defects. Nothing herein permits the Owner(s) of a portion of the Property to park vehicles on any other Owner(s)' portion of the Property without the consent of such Owner and Developer; provided, however, that (i) Owner(s) which own portions of the Property located within Lot 1 (as depicted on the Subdivision Plat), other than the Hotel Parcel, may park vehicles on any other Owner(s)' portion of the Property to the extent located within Lot 1 (other than the Hotel Parcel and Lot 10) and/or Lot 4, (ii) Owner(s) which own portions of the Property located within Lot 4 (as depicted on the Subdivision Plat) may park vehicles on the portion of the Property located within Lot 1 (as depicted on the Subdivision Plat) which is identified as "Permitted Cross Parking Area" on Exhibit A-1 attached hereto and (iii) Owner(s) which own portions of the Property located within Lot 10 (as depicted on the Subdivision Plat) may park vehicles on the portion of the Property located within Lot 1 (as depicted on the Subdivision Plat) which is identified as "Lot 10 Cross Parking Area" on Exhibit A-1 attached hereto.

3.2 Stormwater Easement. The Developer does hereby create, grant, convey and establish on, over, across and through the Property for the benefit of the Owner(s) of the Property, their successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement for stormwater drainage over, across and into the Water Quality Ponds, drainage lines and other drainage facilities to be constructed on the Property (the "Stormwater Detention Facilities"). The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Property. The contour, size and location of such Stormwater Detention Facilities may, from time to time, be altered, modified, updated or changed by the Developer; provided, further, that in no event shall the Owner(s) of the Property be deprived (except during periods of construction or maintenance) of the ongoing use of such Stormwater Detention Facilities, and the Owner(s) of the Property shall continue to

have use of such Stormwater Detention Facilities after such alterations, modifications or changes have been undertaken and completed. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, those portions of the Stormwater Detention Facilities located on the Property (except to the extent dedicated to a public authority) so that the Stormwater Detention Facilities are at all times in good order, condition and repair.

3.3 Sanitary Sewer Easement. The Developer does hereby create, grant, convey and establish on, over, across and through the Property for the benefit of the Owner(s) of the Property, their successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement to allow the Owner(s) of the Property to use the sanitary sewer lines as shown on the Subdivision Plat (the "Sanitary Sewer System") for transporting water and sewage through the Sanitary Sewer System. The Sanitary Sewer System is depicted on the Subdivision Plat and labeled as "20' Sanitary Sewer Easement" on the Subdivision Plat near the north boundary line of the portion of the Property labeled as Lot 4 on the Subdivision Plat. The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Property. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, the portion of the Sanitary Sewer System located on the Property (except to the extent dedicated to a public authority) so that the Sanitary Sewer System is at all times in good order, condition and repair.

3.4 Common Areas Easement. Subject to any rights of Developer as set forth in this Declaration, the Developer grants to the Owner(s) of the Property, their successors and assigns, and their Permittees, a non-exclusive, perpetual and irrevocable easement of use and enjoyment in and to the Common Areas, which right and easement shall be appurtenant to and pass with the title to every portion of the Property. Notwithstanding the recordation of any map or any other action by the Developer, the Common Areas shall not be considered as dedicated to the use and enjoyment of the general public except to the extent same are actually dedicated by Developer as set forth below. Notwithstanding the foregoing or anything in this Declaration to the contrary, for so long as the Developer owns any portion of the Common Areas, Developer may dedicate portions of the Common Areas to the Metropolitan Government of Nashville and Davidson County, Tennessee, or to any other local, state or federal governmental or quasi-governmental entity; provided, however, that such dedication shall not leave the Property in a non-conforming status with regard to setbacks, zoning or other governmental regulations. The Developer shall be responsible for the upkeep and maintenance of the Common Areas until such time, if ever, as same are dedicated to public authorities as set forth above. The Developer shall maintain the Common Areas at all times in a good, clean and first class condition and state of repair comparable to other mixed-use developments of a similar age and location in the greater Nashville, Tennessee area, in compliance with all laws, rules, regulations, orders and ordinances of any governmental agency exercising jurisdiction over, and in compliance with the provisions of this Declaration; provided, however, that (i) Owner(s) which own portions of the Property located within Lot 1 (as depicted on the Subdivision Plat), other than the Hotel Parcel, may park vehicles on any other Owner(s)' portion of the Property to the extent located within Lot 1 (other than the Hotel Parcel and Lot 10) and/or Lot 4 and (ii) Owner(s) which own portions of the Property located within Lot 4 (as depicted on the Subdivision Plat) may park vehicles on the portion of the Property located within Lot 1 (as depicted on the Subdivision Plat) which is identified as "Permitted Cross Parking Area" on Exhibit A-1 attached hereto.

3.5 Temporary Construction Easement. Developer hereby retains a temporary construction easement over the Property for purposes of (i) grading; (ii) constructing and installing utility lines and other utility facilities; and (iii) otherwise completing site work related to the development of the Property. The easements created under this Section expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary to provide the economical and safe completion of the tasks described in items (i) – (iii) above.

3.6 Certain Exceptions. The Owners acknowledge and agree that there may, from time to time, be street festivals within the Project and that during those festivals certain parts of Project that are developed with driveways, walkways, roadways, or parking areas may not be available to provide access or parking. If such festivals have received the prior written approval of Developer, then during and for twenty-four (24) hours before and twenty-four (24) hours after the occurrence of any festivals, such right of access and parking will be suspended to the extent necessary to accommodate the requirements of such festivals; provided, however, that reasonable access to the Property shall be afforded throughout such times to Permittees of the Property.

#### ARTICLE 4 CONSTRUCTION

4.1 Temporary Structures and Storage Areas. Except during any reasonable time period as is necessary for the completion of construction of such Improvements or for the repair, restoration or reconstruction of such Improvements as permitted under Article 8, no partially completed Improvements or other structures of a temporary nature shall be permitted to exist on any portion of the Property.

4.2 Diligent Construction. All construction, landscaping or other work that has been commenced on any portion of the Property must be continued with reasonable diligence to completion in accordance with the provisions of this Article 4.

4.3 Performance of Construction. Every contractor and subcontractor constructing Improvements within the Property shall, consistent with best construction practices for a first-class development, keep all portions of its portion of the Property free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris that is occasioned by construction of Improvements or take other measures consistent with best construction practices for a first-class development necessary to keep its portion of the Property free of garbage, trash or other debris that is occasioned by the construction of the Owner's Improvements. Any trash or construction debris caused by the activities of such Owner or Owner's contractors, subcontractors or agents shall be promptly removed from any streets, sidewalks, walkways or other portions of the Property outside the Parcel or within the Common Area. Any portable bathrooms or port-o-johns shall be reasonably screened. The Owner of each portion of the Property shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris that is occasioned by construction of Improvements. Any trucks, construction equipment or machinery used by such Owner or such Owner's contractors, subcontractors or agents during any such period of construction shall be parked only within the boundaries of such Owner's Parcel, and any construction vehicles and traffic must follow the routes that may be designated by the Operator for construction traffic. All construction materials within a temporary staging and/or storage area must be located wholly within such Owner's Parcel, at a location that will not unreasonably interfere with vehicle and pedestrian circulation. Any damage to the street, curb or sidewalk or to any part of any Common Area or utility system caused by an Owner or Owner's contractors, subcontractors or agents shall be repaired by such responsible Owner.

4.4 Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Unless otherwise required by the applicable public utility, transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the Improvements constructed on the Property or located elsewhere on such portion of the Property provided they are adequately screened from view of the public.

4.5 Landscaping. Each Owner shall install on its Parcel landscaping for all surface parking lots, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration, its approved site plan, and applicable ordinances of the Metropolitan

Government of Nashville and Davidson County, Tennessee. Any areas not covered by buildings, parking lots or other paved areas, including buffer strips and other undeveloped land areas, shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas in a uniform manner.

4.6 Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, temporary sediment traps, diversion ditches, storm water inlet protection or retention pond and temporary seeding, to the extent deemed reasonably necessary, shall be installed by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Parcel in question in accordance with all governmental requirements. All sediment control measures located on any Parcel must be regularly cleaned out and maintained by each Owner of such Parcel until such portion of the Property has been permanently stabilized with respect to soil erosion.

4.7 Construction Restrictions and Standards. Any Owner performing, or causing to be performed, construction work on a Parcel must perform, or cause to be performed, such work in a good, workmanlike, safe, expeditious, and diligent manner, in accordance with all legal requirements, and use reasonably prudent methods so as to minimize any disruption or inconvenience caused by such work to the other improved portions of the Project and to the other Owners and their Permittees. With respect to any alterations or betterments other than the initial Improvements to be located on any Parcel, any construction zone and staging area shall only be as large as is reasonably necessary and the size thereof shall be reduced to the extent practical during the construction period. The person or entity performing such work must use appropriate methods customarily utilized in order to control dust, noise, and other deleterious effects of such work in a populated or densely developed area. The Owner of the Parcel upon which such work is conducted must repair at its own cost and expense any and all damage caused by such work. Effective on and after the date the "Sprouts" grocery store located on the Property is open for business, (a) during the course of construction at the Project, no construction vehicles shall be allowed to access the Project utilizing the two entrances closest to the shopping center to be located on the Property and located on US 70 South or to travel on the internal drive lanes within the Property and (b) all construction related traffic shall access the Property from Sawyer Brown Road.

4.8 Plan Approval. The initial construction plans for any Improvements on the Property, together with any subsequent exterior alterations thereto, shall be subject to the prior written consent of Developer, such consent not to be unreasonably withheld, conditioned or delayed.

## ARTICLE 5 MAINTENANCE OF PARCELS

5.1 Duty of Maintenance. Except to the extent that such maintenance is an obligation of the Developer as provided elsewhere herein, each Owner at its sole expense is responsible for (a) keeping its Parcel and all Improvements located thereon in a well-planned, clean, and attractive condition at all times, consistent with the first-class nature of the Project, which obligation, includes, but is not limited to: disposal of litter, lawn mowing, tree and shrub pruning; watering; replacement of landscaping; regular sweeping or washing, or both, as required, of all pavement areas; and striping of parking areas, (b) ensuring that its Parcel complies in all respects with all governmental laws, codes, rules and regulations, including those which address fire and human health and safety and (c) maintaining and repairing any underground and above ground lines, equipment and facilities for the delivery of utility services, which includes, but is not limited to, storm water, sanitary sewer, water (fire and domestic), sprinkler and irrigation, gas, electrical, cable television, telephone and other communication lines located on such Owner's Parcel which exclusively serve such Parcel, unless the same is otherwise maintained by a public utility company and/or governmental authority having jurisdiction.

## **ARTICLE 6 INSURANCE**

6.1 Basic Owner Insurance Requirements. Each Owner must carry for its Parcel or, if a third party is the occupant any Parcel of the Property, may cause such occupant to carry the following insurance:

(a) Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence;

(b) Workers' compensation as required by any applicable law or regulation and employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease; and

(c) Automobile Liability Insurance for owned, hired and non-owned automobiles with limits of liability that shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

6.2 Property Insurance. Effective upon the commencement of construction of any building on its Parcel and so long as such building exists, an Owner shall carry, or cause to be carried, property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

## **ARTICLE 7 INDEMNITY**

To the fullest extent permitted by law, each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and Developer from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any person located on the Parcel owned by each indemnifying Owner to the extent arising from the negligence or misconduct of such Owner; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Owner, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

## **ARTICLE 8 CASUALTY AND CONDEMNATION**

8.1 Casualty. In the event any Improvements located on any Parcel (other than Common Areas located on any Parcel) are damaged or destroyed by fire or other casualty, the Owner of such Parcel must, within a reasonable period of time not to exceed ninety (90) days, either (a) contract to repair, restore and rebuild such Improvements and cause such buildings situated on such Parcel to be repaired, restored and rebuilt to their prior condition in a diligent manner and complete such repair, restoration, or rebuilding within the Required Time Period (as defined below), or (b) in the event the Owner of the affected Parcel determines not to repair, restore or rebuild such damaged or destroyed buildings or fails to complete such repair, restoration, or rebuilding within the Required Time Period, such Owner must, within sixty (60) days after the expiration of such ninety (90)-day period (if the Owner elects not to repair, restore, or rebuild) or the expiration of the Required Time Period (under all other circumstances)

raze all of the damaged Improvements on its Parcel, clear its Parcel of all debris resulting from such razing, and seed or sod the razed portion of the Parcel with grass. Notwithstanding the foregoing, the Owner of such Parcel must repair, restore, and rebuild all streetscapes, pedestrian walkways, and other linkages to the remainder of the Project which were damaged or destroyed as a result of such casualty within what would have been the Required Time Period had such Owner elected to repair, restore, and rebuild. The Required Time Periods for partial damage or destruction of the Improvements on a Parcel are one hundred eighty (180) days and for complete destruction of the Improvements on a Parcel are two hundred seventy (270) days.

8.2 Condemnation. The Owner of any Parcel taken by condemnation or eminent domain must promptly repair, restore, and rebuild the remaining portion of such Parcel (other than Common Areas located on any Parcel) as nearly as possible in the circumstances to the condition which existed prior to such condemnation or eminent domain without contribution from any other Owner; provided, however, in the event the Owner of such Parcel determines that it is no longer feasible to conduct business within the Improvements on such partially-condemned Parcel (which determination cannot be made arbitrarily), such Owner must raze any remaining Improvements on such partially condemned Parcel, clear such Parcel of all debris, and seed or sod such Parcel with grass. If an Owner elects to raze the Improvements, then the Owner must do so within ninety (90) days after the date of such taking (defined as the day title is actually transferred) and if the Owner does not do so within such time period, the Owner will be deemed to have elected to repair and restore. Notwithstanding the foregoing, such Owner must repair, restore, and rebuild all streetscapes, pedestrian walkways, and other linkages to the remainder of the Project which were affected by such taking. Any repair, restoration, or rebuilding (whether of all Improvements or pursuant to the terms of the immediately-preceding sentence) must be completed within one hundred eighty (180) days after the date of such taking. Any award of compensation or damages (whether obtained by agreement or by judgment, verdict or order in a legal proceeding) resulting from the taking of any Parcel, or any portion of a Parcel, by exercise of right of condemnation or eminent domain by any governmental authority or other public or quasi-governmental authority must be distributed in accordance with the terms of the agreement, or the judgment, verdict or order made in the proceedings concerning such taking. In the event of any sale of any Parcel, or any portion thereof, under threat of condemnation or eminent domain, such Parcel, or applicable portion of such Parcel, will for all purposes be deemed to have been "taken" as that term is used in this Section 8.2, and the net amount of the price received for such Parcel after deduction of the expenses of the sale borne by the Owner of the Parcel taken will be deemed to constitute an "award" as that term is used in this Section 8.2. However, nothing contained in this Section 8.2 entitles any Owner to share in any award made to any other Owner whose Parcel, or portion of a Parcel, is taken, other than as provided above and to the extent an award is made for the interest of such Owner created by this Declaration in the Parcel taken.

## ARTICLE 9 PROHIBITED USES AND RESTRICTIONS

9.1 General. No use shall be permitted on any portion of the Project which is not allowed under applicable public codes and ordinances either already adopted or as may be adopted by the Metropolitan Government of Nashville and Davidson County, Tennessee or other controlling public authority. Each Owner or other user of any portion of the Project shall comply at all times in every respect with this Declaration, and any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Project, specifically including, but not limited to, the zoning restrictions of the Metropolitan Government of Nashville and Davidson County, Tennessee applicable thereto as they exist from time to time. In the event a conflict exists between any such public requirement and any requirement of this Declaration, the more restrictive requirement shall prevail. Where a governmental requirement does not

clearly conflict with the provisions of this Declaration, but permits action that is different from that required by this Declaration, the provisions of this Declaration shall prevail. All portions of the Project shall be developed in accordance with this Declaration.

9.2 Prohibited Uses. Certain uses are prohibited throughout the Property, subject to and as more particularly set forth on Exhibit B attached hereto. No Owner may use all or any part of its Parcel for any use listed in Exhibit B attached hereto which uses are collectively defined herein as the "**Prohibited Uses**". The Prohibited Uses shall be prohibited so long as this Declaration is in full force and effect, except as set forth on Exhibit B attached hereto.

9.3 Hotel Provisions.

(a) Generally. The development and use of the Hotel Parcel shall be restricted to a lodging facility with not fewer than 100 rooms under the trade name and business style approved by Developer in writing (the "**Required Hotel Use**"). No other use is permitted on the Hotel Parcel.

(b) Repurchase Rights.

(i) Construction Commencement/Completion. In the event that the Owner of the Hotel Parcel has not commenced construction of the hotel on the Hotel Parcel or is not diligently working to complete such construction by the first anniversary of the date hereof (the "**Repurchase Right Trigger Date**"), Developer may, at its option, upon written notice to such Owner delivered at any time after the Repurchase Right Trigger Date and prior to completion of construction on the Hotel Parcel, exercise the option set forth herein to repurchase the Hotel Parcel from such Owner at the same price as the Hotel Parcel was purchased by such Owner as stated in the closing disbursement statement from the closing thereof. The re-conveyance of the Hotel Parcel to Developer shall be by special warranty deed, reasonably acceptable to Developer, free and clear of any liens or encumbrances placed or suffered thereon by the Owner of the Hotel Parcel or its successors or assigns, which deed shall be delivered concurrent with the payment by Developer to such Owner of such purchase price through a deed and money escrow established with Escrow Agent for such purpose. For purposes of this Section 9.3(b), construction shall be deemed to have commenced upon the installation of the first footings for the first building on the Hotel Parcel pursuant to a properly issued building permit.

(ii) Right of First Refusal. Developer shall have an ongoing right of first refusal to purchase the Hotel Parcel, as more particularly described on Exhibit C attached hereto.

(c) Required Opening/Operations. The Owner of the Hotel Parcel shall open for business for the Required Hotel Use within 15 months following the date hereof (the "**Hotel Opening Deadline**") and shall thereafter use and occupy the Hotel Parcel continuously and uninterruptedly for the Required Hotel Use, except when prevented from so doing by casualty.

(d) Flag. Unless otherwise approved by Developer, the Owner of the Hotel Parcel shall conduct business on the Hotel Parcel only in the brand ("flag") name approved in advance by Developer.

(e) Additional Restricted Use. For so long as that certain Lease between Bellevue Redevelopment Associates, LP, as landlord, and PetsMart, Inc., as tenant, remains in effect, the Hotel Parcel shall not be used for the retail sale of one or more of the following: (a) pets (including, but not limited to, fish, birds, reptiles, dogs, cats and other small animals); (b) pet food, pet accessories and other products relating to pets and animals; and (c) services related to



pets and animals, such as grooming, boarding, pet day care, animal training and obedience classes, pet adoption and veterinary services.

9.4 Hotel Property Use Restriction. The development and use of the Property shall be restricted to retail buildings, office buildings, hotels, open space and common areas and any and all other uses that may be permitted by applicable law, except as set forth on Exhibit B attached hereto; provided, however:

(a) For a period of four (4) years following the date hereof no Owner of the portion of the Property identified as "Moratorium Area" on the Site Plan may use all or any part of the Moratorium Area as a lodging facility. The foregoing notwithstanding, at any time after such four (4) year period, if any Owner(s) of the Moratorium Area seeks to market for sale or develop any portion of the Moratorium Area for a lodging facility, such Owner(s) first shall provide the Owner of the Hotel Parcel an exclusive opportunity, for a period of ten (10) business days, to negotiate with the Owner(s) of the Moratorium Area the purchase of such portion of the Property on which the Owner(s) of the Moratorium Area seek to market for sale or develop or use as a lodging facility. If at the end of such ten (10) business day period, the parties have not reached agreement regarding the purchase and sale of such portion of the Moratorium Area, each in its sole and absolute discretion, then the Owner(s) of the Moratorium Area shall be free to proceed with the marketing for sale or development of such portion of the Moratorium Area for a lodging facility.

(b) In no event shall the portion of the Property identified as "Restricted Hotel Area" on the Site Plan be developed and operated as a lodging facility.

9.5 Obstructions. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in such areas by any Owner, nor shall anything be altered, constructed or planted in, or removed from such areas, without the prior written consent of the Developer.

9.6 Waste; Prohibition Against Dumping. No portion of the Property may be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any portion of the Property except on a temporary basis in sanitary containers. No dumping of trash, garbage, sewage, sawdust, organic or inorganic waste or other similar materials shall occur and no unsightly or offensive material shall be placed on the Common Areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Common Areas. In addition, the following types of activities are prohibited, unless authorized by the Developer or Developer:

- (i) Dumping backfill into Common Areas.
- (ii) Excavating soil from Common Areas.
- (iii) Parking in a Common Area, except as otherwise designed by Developer.
- (iv) Stacking or storing supplies or equipment in the Common Areas.
- (v) Changing site grade so as to cause drainage problems in the Common Areas.
- (vi) Locating temporary construction buildings in the Common Areas.
- (vii) Disposing of toxic or hazardous materials in the Common Areas.



Notwithstanding the provisions of this Section 9.6 the Developer may establish and maintain, from time to time within any Common Area, storage areas for mulch piles, stacked firewood, rocks and other natural materials for the use and benefit of the Common Areas.

9.7 Septic Systems. No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

## ARTICLE 10 DEFAULT

10.1 Notice of Default. The occurrence of any one or more of the following events constitutes a material default and breach of this Declaration by the non-performing Owner (the "Defaulting Party"):

(a) The failure to make any payment required to be made hereunder to another Owner or Developer within ten (10) days after the giving of notice by such Owner or Developer, as the case may be, to the Defaulting Party that such payment is due.

(b) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (a) above, within thirty (30) days after the giving of a notice by another Owner (the "Non-Defaulting Party") or Developer specifying the nature of the default claimed. Notwithstanding the foregoing, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party or Developer, as the case may be, of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party shall be entitled to additional time, not to exceed ninety (90) additional days, to cure such default.

10.2 Right to Cure Default. With respect to any default under Section 10.1(b), any Non-Defaulting Party or Developer may cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party following the expiration of any applicable cure period; provided, however, that if such default constitutes an emergency condition, the Defaulting Party is only entitled to such advance notice as is reasonably possible under the circumstances or, if necessary, no notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party or Developer which issued such notice may enter upon the Parcel of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. If any Non-Defaulting Party or Developer cures a default, the Defaulting Party shall reimburse the Non-Defaulting Party or Developer, as the case may be, for all costs and expenses incurred in connection with such curative action within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

10.3 Right to Lien. The cost and expense incurred by Developer to cure a default of the type set forth in Section 10.1(a), plus Interest on all such sums, shall constitute a lien against the Defaulting Party's Parcel. Such lien shall attach and take effect only upon recordation of a claim of lien in the Davidson County Office of the Register by Developer. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Property is located. The lien shall be subject and subordinate to any mortgage or deed of trust which is of record before the claim of lien is placed of record.

10.4 Additional Remedies. Each Non-Defaulting Party may prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. All of the remedies permitted or available to Developer or an Owner under this Declaration or at law or in equity are cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If Developer or an Owner brings an action of law or in equity to enforce the terms and provisions of this Declaration, the prevailing Owner (or Developer, as the case may be) as determined by the Court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including appellate proceedings, in addition to any remedy granted.

10.5 Interest. Any time an Owner does not pay any sum payable hereunder to another Owner within five (5) days of the due date, such delinquent Owner must pay interest ("Interest") on such amount from the due date to and including the date such payment is received by the party entitled thereto, at the prime rate, plus three percent (3%). As used herein, "prime rate" means the highest rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates" or similar national publication.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Binding Effect and Duration. The provisions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of the Owners of Parcels and their respective legal representatives, heirs, successors and assigns for the maximum period of time permitted by applicable law. By its acceptance of a deed of any Parcel, each Owner automatically agrees that this Declaration is binding as to such Owner and Parcel. The easements created by this Declaration shall continue in perpetuity unless terminated by a document that is executed by all Owners whose Parcels are affected thereby.

11.2 Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended only by an instrument executed by (i) Developer, and (ii) any other Owner whose rights would be materially decreased or obligations materially increased as a result of such amendment.

11.3 Severability. To the extent that any portion of this Declaration is unenforceable or inapplicable for any reason (for example, but without limitation, because it is generally unenforceable or inapplicable or is unenforceable or inapplicable in specific circumstances or in connection with a particular person or entity), this Declaration and the other provisions of this Declaration will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision were not contained in this Declaration (generally or in the specific circumstances in question, as appropriate). Furthermore, to the extent permitted under applicable law, a substitute provision that would be enforceable or applicable and which would achieve the results intended by the unenforceable or inapplicable provision will be deemed substituted into this Declaration (either generally or in the specific circumstances in question, as appropriate).

11.4 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier addressed to Bellevue at its address set forth below, and the same shall be effective upon receipt or refusal, or sent by electronic mail (with a copy sent by one of the other methods specified herein). The initial address of Developer shall be:

To Bellevue:

Bellevue Redevelopment Associates, LP

c/o Branch Properties, LLC  
3340 Peachtree Road NE, Suite 600  
Atlanta, Georgia 30326  
Attn: Jesse Shannon

The address for any other Owner shall be the address set forth on the applicable Davidson County, Tennessee ad valorem tax bill.

Upon at least ten (10) days' prior written notice, a party shall have the right to change its address to any other address.

11.5 Mortgagee's Rights. An Owner must send simultaneous copies of any notices of default relating to a particular Parcel to the mortgagee of such Parcel as long as such Owner has previously received a request to do so from such mortgagee together with a specific address to which such notices must be sent. The mortgagee will be given thirty (30) days from the date of such notice in which to cure such default should it so elect; provided, however, if such default results, or could result, in any imminent danger to any portion of the Project or to any person, then the cure period specified above will be decreased to ten (10) days.

11.6 Estoppel. Each Owner (the "Requesting Owner") shall, from time to time, within ten (10) business days after receipt of written request from the other Owner (the "Responding Owner"), execute, acknowledge and deliver to the Requesting Owner or to any existing or prospective purchaser or mortgagee designated by the Requesting Owner, a certificate (the "Estoppel Certificate") stating, to the extent applicable:

- (a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (b) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the Requesting Owner and, if so, specifying the nature and extent thereof;
- (c) the nature and extent of any set-offs, claims, counterclaims, and/or defenses then being asserted or capable of being asserted after giving the notice, if any, required hereunder or otherwise known by the Responding Owner against the enforcement of the Requesting Owner's obligations hereunder;
- (d) the total amount of all sums owed hereunder and all liens being asserted or capable of being asserted after giving notice, if any, required hereunder under the provisions of this Declaration describing the applicable provision or provisions and the details of any such lien claim;
- (e) the current address or addresses to which notices given to Responding Owner are to be mailed; and
- (f) such other facts or conclusions as may be reasonably requested.

11.7 No Merger. Unless otherwise clearly indicated to the contrary in a written, recorded document executed by all then current Owners, in no event will there be a merger of the dominant and servant tenements in the Parcels by virtue of the present or future ownership of any portion of said tenements being vested in the same person or entity, but instead the easements and servitudes created

pursuant to the terms of this Declaration will not be extinguished by such vesting in common ownership and the dominant and servient tenements will be kept separate.

11.8 Owner's Obligation to Ensure Compliance. Although an Owner may impose upon a third party (usually, a tenant) the obligation to comply with and perform the duties of the Owner under this Declaration, such imposition does not free the Owner from the obligation to comply with and perform the duties of the Owner under this Declaration, which obligation continues to rest fully and completely with the Owner.

11.9 No Joint Venture or Partnership. None of the terms or provisions contained in this Declaration creates, or can be deemed to create, a partnership between or among the Owners in their respective businesses, or otherwise, nor can this Declaration cause the Owners to be considered joint venturers or members of any joint enterprise or association or render any of said Owners liable for the debts or obligations of any other of said Owners.

11.10 No Public Dedication. Nothing in this Declaration can be deemed to be a gift or dedication of any portion of the Project, or of any Parcel, or any portion of the Project or a Parcel, to the general public, for the general public or for any public use or purpose whatsoever, it being the intent that this Declaration be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private real estate development on private property solely for the benefit of the Owners, except that certain easements and rights-of-way within the Project have been so dedicated by separate documents and may in the future be dedicated by separate documents.

11.11 Force Majeure. Whenever performance is required of any Owner under this Declaration, that Owner must use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance is delayed or prevented at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or any other cause beyond the reasonable control of an Owner obligated to perform hereunder (financial inability, imprudent management, failure to meet the obligation to carry insurance, or negligence excepted), then the time for performance as herein specified will be appropriately extended by the amount of the delay actually so caused.

11.12 Personal Liability. Notwithstanding anything contained in this Declaration to the contrary, in any action brought to enforce the obligations of any Owner, any money judgment or decree entered in any such action shall, to the extent provided by law, be a lien upon and shall be enforced against and satisfied only out of (i) the proceeds of sale produced upon execution of such judgment and levy thereon against such Owner's interest in its respective Parcel and the Improvements thereon, (ii) the rents, issues or other income receivable from such Owner's Parcel, and (iii) insurance and condemnation proceeds with respect to such Owner's Parcel, and no Owner shall have personal or corporate financial liability for any deficiency; provided, however, and notwithstanding the foregoing to the contrary, the limitations in this Section shall not apply to claims based upon intentional torts (including, without limitation, fraud or misrepresentation) committed by any party; and provided, further, all Owners shall be entitled to obtain equitable relief and personal judgment necessary to implement the relief (as used here, "equitable relief" does not include a claim for damages, even if based on equitable grounds).

Without limiting the generality of the foregoing, Developer and any member, agent, officer, director or employee thereof shall not be liable to any Owner for any mistake of judgment, whether negligent or otherwise, or for any action or any failure to act under this Declaration if the mistake, action or failure to act was in good faith and without malice.

11.13 Attorney's Fees. In the event any Owner brings suit against any other Owner concerning any matters provided for herein, the prevailing Owner is entitled to recover from the other Owner reasonable attorneys' fees and costs of court in connection with such suit. As used herein, a "prevailing Owner" includes, without limitation, an Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

11.14 Entire Agreement. This Declaration constitutes the entire agreement and understanding between the Owners and supersedes all prior agreements and understandings, if any, concerning the subject matter hereof, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning the subject matter of this Declaration other than those expressly herein set forth and any properly entered into amendments of this Declaration.

11.15 Headings. The headings, captions, numbering system, etc. are inserted only as a matter of convenience and under no circumstances will they be considered in interpreting the provisions of this Declaration.

11.16 Number and Gender. Where required for proper interpretation, words in the singular tense includes the plural, and vice versa; the masculine gender includes the neuter and the feminine, and vice versa.

11.17 Applicable Law. This Declaration is to be construed under and in accordance with the laws of the State of Tennessee and the laws of the United States applicable to transactions in Tennessee. All of the obligations contained in this Declaration are performable in Davidson County, Tennessee.

11.18 Enforcement. This Declaration may be enforced by Developer and/or any Owner of the Property, and their respective mortgagees, but none other.

11.19 Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original to the same effect as if all parties hereto had executed the same instrument and all of which shall together constitute one and the same instrument.

***SIGNATURE PAGE TO FOLLOW***

IN WITNESS WHEREOF, Bellevue has caused this Declaration to be executed to be effective as of the date first written above.

**BELLEVUE:**

**BELLEVUE REDEVELOPMENT ASSOCIATES,  
LP, a Delaware limited partnership**

By: Branch Retail GP, LLC, a Georgia limited  
liability company, its general partner

By: Richard H. Lee  
Name: Richard H. Lee  
Title: Authorized Signatory

STATE OF GEORGIA  
COUNTY OF FULTON

Personally appeared before me, the undersigned, a Notary Public, RICHARD H. LEE, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the AUTHORIZED SIGNATORY of Branch Retail GP, LLC, a Georgia limited liability company, and is authorized to execute this instrument on behalf of Bellevue Redevelopment Associates, LP.

WITNESS my hand and Official Seal at office, this 14<sup>th</sup> day of December, 2016.

Marianne Boggs  
Notary Public

My Commission Expires 5-22-18.

[signatures continue on following page]



**CONSENT OF MORTGAGEE**

**BANK OF THE OZARKS** is the holder of that certain Deed of Trust, Security Agreement and Fixture Filing on a portion of the property described in the foregoing DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ONE BELLEVUE PLACE (the "**Declaration**"), said Deed of Trust, Security Agreement and Fixture Filing having been filed as Instrument No. 20160201-0009682 in the Davidson County Public Registry (as amended, the "**Security Instrument**"), and as holder of said Security Instrument, does hereby consent to the terms, conditions and covenants in the foregoing Declaration and agree that the lien of said Security Instrument is subordinate to and subject to all of the terms, conditions and covenants contained in said Declaration.

In witness whereof, **BANK OF THE OZARKS** has caused this Consent of Mortgagee to be signed in its corporate name by its duly authorized officer.

**BANK OF THE OZARKS**

By: \_\_\_\_\_

Name: BRANNON HAMBLÉN

Title: DIRECTOR OF ASSET MANAGEMENT - RESG

STATE OF Texas

COUNTY OF Dallas

I certify that the following persons personally appeared before me this day, acknowledging to me that they each signed the foregoing document: Brannon Hamblen

[Insert Name of person signing -- not

title]

Today's Date: October 26, 2016.

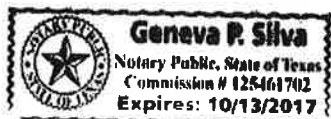
Geneva P. Silva

[Notary's signature as name appears on seal]

Geneva P. Silva

[Notary's printed name as name appears on seal]

My commission expires: 10/13/2017



[Affix Notary Seal in Space Above]

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROPERTY**

Lots 1, 4, 8 and 9 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) Dated December 11, 2015 and Prepared by Barge, Waggoner, Sumner & Cannon, Inc. as File No. 3333705 and recorded on December 18, 2015, as Document Number 20151218-0127344.



## **EXHIBIT A-1**

### **SITE PLAN**

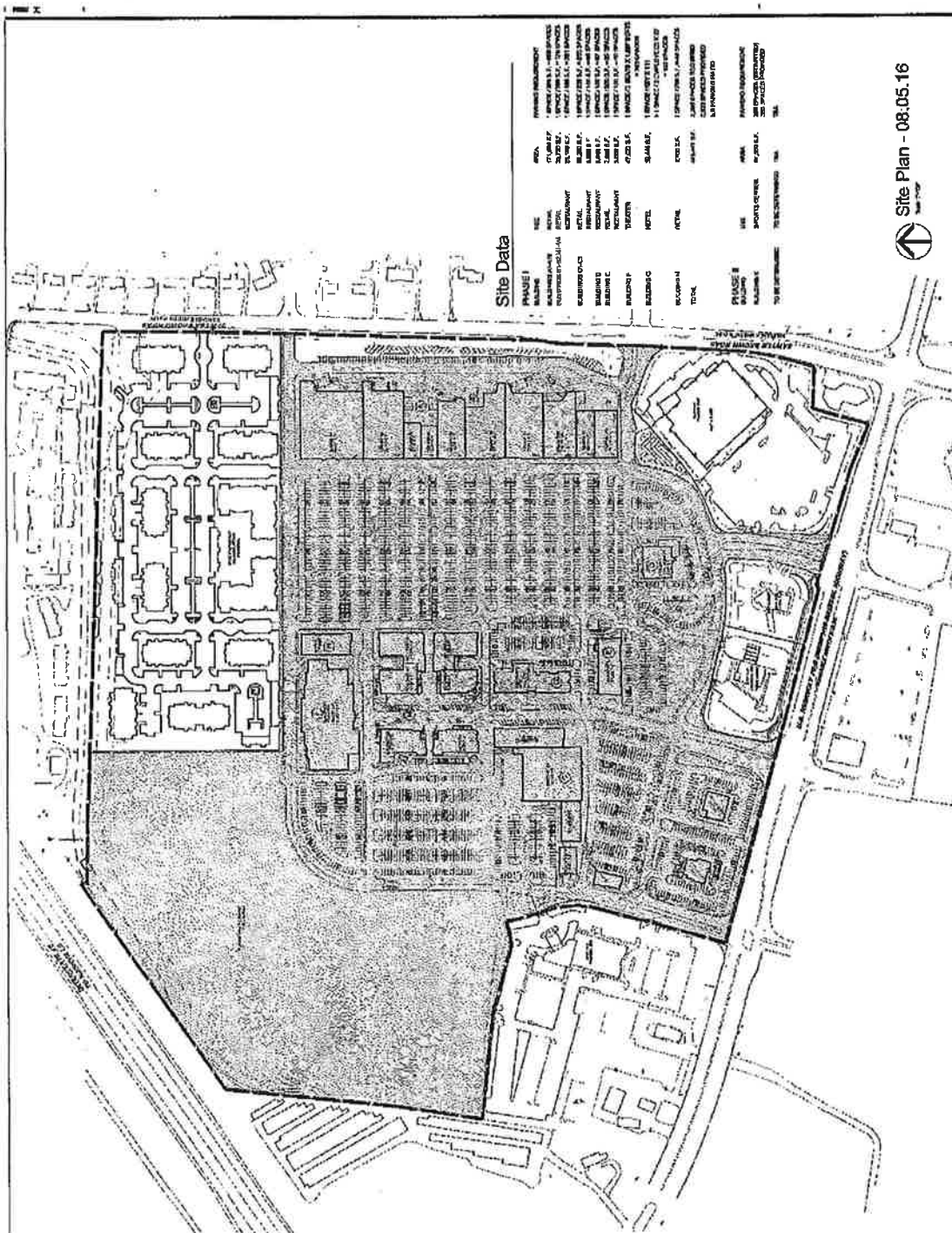
These maps are not certified surveys and have not been reviewed by a local government agency for compliance with any applicable land development regulations.



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[illegible]

Site Plan - 08.05.16





**EXHIBIT A-2**

**LEGAL DESCRIPTION OF HOTEL PARCEL**

BEING ALL OF THAT PARCEL OF LAND SHOWN AS LOT 11 ON THAT CERTAIN PLAT TITLED "RESUBDIVISION PLAT OF LOT 1 ONE BELLEVUE PLACE" OF RECORD AS DOCUMENT NUMBER 20161020-0111109 IN THE REGISTER OF DEEDS OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

BEING PART OF THE PROPERTY CONVEYED TO BELLEVUE REDEVELOPMENT ASSOCIATES, LP, BY DEED FROM BELLEVUE DEVELOPMENT, LLC, OF RECORD IN INSTRUMENT NO. 20160105-0000932, REGISTER OF DEEDS OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

**EXHIBIT A-3**

**LEGAL DESCRIPTION OF LOT 10**

BEING ALL OF THAT PARCEL OF LAND SHOWN AS LOT 10 ON THAT CERTAIN PLAT  
TITLED "RESUBDIVISION PLAT OF LOT 1 ONE BELLEVUE PLACE" OF RECORD AS  
DOCUMENT NUMBER 20161020-0111109 IN THE REGISTER OF DEEDS OFFICE FOR  
DAVIDSON COUNTY, TENNESSEE.

## **EXHIBIT B**

### **PROHIBITED USES**

1. Massage parlor (provided, this shall not prohibit the offering of therapeutic massages by gyms, spas or retailers such as Massage Envy), adult book store, peep show store, head shop store or any other similar store or club in which a material portion of its inventory includes obscene or pornographic materials (as determined by a court of competent jurisdiction), nude photos, sexual devices, magazines, videos, tapes or objects depicting nudity or sexual activity and other similar items, or any store or club whose activities include the display of partially or totally nude males or females (whether topless or bottomless or otherwise);
2. Establishment displaying or exhibiting illegal drug-related paraphernalia or materials;
3. Dance or music hall, dancing ballroom or establishment, banquet hall, night club or discotheque except as incidental to any occupant's customary business;
4. Training school or educational facility, including, but not limited to, beauty school, barber college, place of instruction, school of any nature, library, reading room or any business catering primarily to students or trainees rather than to customers; provided, however, that this prohibition shall not be applicable to (i) on-site employee training nor be applicable to customer classes for a service sold or offered by the occupant incidental to the conduct of its business at the shopping center located on the Commercial Property; (ii) supplemental education providers such as "Sylvan," "Kumon" or similar tenants operating in a first-class manner; or (iii) Lot 4 as shown on the Subdivision Plat.
5. Public or private nuisance or use emitting obnoxious or offensive odors, sounds or vibrations outside of any building;
6. Gambling facility or operation, including, but not limited to, any so-called "off-track" or sports betting parlor, gaming, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices; provided, however, that this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, including bingo so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;
7. Manufacturing facility, factory or industrial usage, warehouse not incidental to retail sales, processing or rendering plant, operation used primarily as a storage warehouse operation, or any assembling, manufacturing, refining, smelting, agricultural, or mining operation;
8. Central laundry, dry cleaning plant, dry cleaner or laundromat; provided, however, that this prohibition shall not be applicable to nominal supportive facilities or on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Property is located;
9. Selling or leasing automobiles, trucks, trailers, motorcycles, recreational vehicles, boats or other motor vehicles (new or used) but this prohibition shall not prevent such goods from being reasonably displayed by any occupant nor shall this prohibition limit the sale of boats and recreational vehicles from a full-line sporting goods store such as Dick's Sporting Goods, Cabela's, Gander Mountain, West Marine or Bass Pro Shop; (ii) the display of a motorized vehicle where delivery of such vehicle does not occur on premises (such as, for example, showrooms operated by Tesla Motors), (iii) the consumer

leasing of light duty trucks for transport of tools or materials purchasers or rented from a retailer (such as Home Depot or Lowe's), or (iv) the operation of a motorcycle or scooter dealership in Lot 4;

10. Mobile home park, trailer park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

11. On-site drilling for and/or removal of subsurface substance, dumping, disposing, incineration, or reduction of garbage or refuse (exclusive of garbage compactors which shall be screened from public view);

12. Veterinary hospital or animal raising or boarding facility; provided, however, that this prohibition shall not prohibit pet shops and veterinarians from incidentally operation within larger pet supply facilities or businesses;

13. Funeral parlor or mortuary;

14. Auction house or flea market operation;

15. Activities involving the hazardous use of fire or explosives; provided, however, that this shall not prohibit the exhibition of fireworks at the Project, on special occasions only, by qualified fireworks handlers.

16. Cinema or theater for the projection, exhibition or broadcast of full-length motion pictures (other than one (1) cinema located on Lot 1);

Following the termination or expiration of the Sprouts Lease, the Developer, at its option, in its sole and absolute discretion, shall have the right to waive from time to time the prohibited uses set forth in Items 17-30 below for one (1) or more Parcels.

17. Other than the premises occupied by SFM, LLC (currently d/b/a Sprouts Farmers Market) and its successors and assigns, the operation, sale, rental or distribution, either singly or in any combination, of any of the following activities and/or merchandise: (i) the operation of a grocery store, meat or seafood market or produce market, or the sale of any such items; (ii) the sale of vitamins and supplements, ethnic foods, natural and health food, pet food, and ice cream; (iii) the sale of natural cosmetics, natural health and beauty products; (iv) the sale of packaged beer and wine for off-premises consumption; (v) the operation of a full service bakery; and (vi) the operation of an over-the-counter delicatessen offering sliced or butchered meats and cheeses for off-premises consumption (all of which are included in and referred to as "Tenant's Exclusive"), and all other tenants or occupants are prohibited from engaging in Tenant's Exclusive except on an Incidental Basis (defined below), provided that there shall be no exception for the sale of fresh meat, seafood and produce. **"Incidental Basis"** means the area dedicated to the sale of such items occupies the lesser of: (a) 400 square feet of gross floor area; or (b) 4% of the aggregate retail selling space of the subject premises; provided not more than 4 linear feet of retail selling space shall be dedicated to the display and sale of any one category of ancillary products. The foregoing shall not restrict the following specific uses (to the extent same are otherwise permitted hereunder): (i) restaurant which primarily serves food for on-premises consumption or a coffee shop or sandwich shop such as Starbucks, Panera Bread, Jimmy John Sandwiches, Einstein's Bagels, Puffy Muffin or Subway as they currently operate as of the date hereof; (ii) an ice cream, smoothie, gelato or frozen yogurt shop; (iii) a pick up or delivery outlet (such as a pizza delivery shop or Chinese carry-out) which occupies not more than 2,000 square feet of gross floor area each; (iv) a cosmetic store such as ULTA, Beauty Brands, Sally Beauty as they currently operate as of the date



hereof or similar beauty supply type store, day spa or a salon such as Aveda Salon as they currently operate as of the date hereof; or (v) a full service pharmacy or drug store such as CVS or Walgreens as they currently operate as of the date hereof, or (vi) a pet store or pet supplies store such as PetSmart, Petco or Pet Supplies Plus as they currently operate as of the date hereof, or (vii) or any department store in excess of 40,000 square feet of gross floor area or soft goods anchor in excess of 20,000 square feet of gross floor area such as TJ Maxx or Marshall's, so long as not more than 500 square feet of gross floor area, in aggregate, is used for the display of the foregoing items. In the event SFM, LLC (currently d/b/a Sprouts) assigns its lease with Developer (the "Sprouts Lease"), or sublets its premises to a retail user other than a grocery store, then Tenant's Exclusive set forth above shall cease as of the date such assignee or sublessor opens for business. Further, the foregoing shall (i) not apply to the premises occupied by Sprouts, or its successors, subtenants, and assigns, and (ii) terminate upon the expiration or termination of the Sprouts Lease.

18. Any so-called single price point discount or discount dollar stores (such as Dollar Tree, 99 Cents and More, Family Dollar, Dollar General, or any stores with a similar business plan or similar operation) (a "Dollar Store"); but the foregoing shall not prohibit a Five Below nor shall it encumber those portions of the Property as described in the Sprouts Lease;

19. Car wash, tire store, automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks (except the foregoing shall not apply to Lot 4)

20. Used clothing or thrift store, Salvation Army" or "Goodwill" type store or similar business, or a "second hand" store where principle business is selling used merchandise (other than any jewelry store, any store operated in a similar fashion as Gamestop, Play it Again Sports or Plato's Closet or any other upscale resale boutique);

21. a donation drop-off facility;

22. a "surplus" store or close-out retailer selling under stock or overstock merchandise or liquidation outlet (collectively, a "Surplus Store"), except such use may be located in Lot 4, so long as in the aggregate, there are no more than 2 Surplus Stores and Dollar Stores (as defined in item a. above) within the Project at any given time. Further, for purposes of counting Surplus Stores, so called "off-price" retailers such as DSW, Stein Mart, Ross, Marshalls, TJ Maxx, Nordstrom Rack, Burlington Coat Factory, Macy's Backstage, Christmas Tree Shops, Bealls Outlet, Burkes Outlet and Tuesday Morning and outlet-type stores operated by a national retailer such as Gap Factory shall not be considered Surplus Stores;

23. Amusement center, carnival, virtual reality, laser tag, jump/trampoline facility, game arcade, or a children's recreational facility or play center of any kind, including, but not limited to, concepts such as "Boomerang's," "Funtastic," "Chuck E. Cheese," "Jump Zone" and "Peter Piper Pizza", or other stores operating under similar business plans and operations, provided, such restriction shall not encumber Lot 4 not shall it prohibit the operation of a play or gaming area in a restaurant or movie theatre;

24. Bowling alley, pool hall, or skating rink (except that same shall not be prohibited in Lot 4);

25. Animal raising or storage facility (except incidental to a full-line retail pet supply store to the extent otherwise permitted hereunder);

26. Pawn shop, auction house, flea market, swap meet, or junk yard;

27. Hotels (excluding a hotel located within the Hotel Parcel and up to 2 additional hotels may be located within Lot 4);

28. Church;

29. Gun range or shooting club (provided, this use shall not be prohibited to the extent incidental to a full-line sporting goods store); and

30. Nursing home, old age center, or governmental facility (other than a post office to the extent otherwise permitted hereunder), recruiting center or employment center (provided that the foregoing shall not encumber Lot 4).

## EXHIBIT C

### RIGHT OF FIRST REFUSAL - HOTEL PARCEL

1. Option to Purchase Hotel Parcel. The Owner of the Hotel Parcel, and its successors and assigns, hereby grants to Developer an ongoing right of first refusal to purchase the Hotel Parcel in accordance with the terms of this Exhibit C (the "ROFR Option").

2. Option Exercise Period. Prior to offering or accepting any third-party offers or arrangements for sale of the Hotel Parcel, the Owner of the Hotel Parcel shall notify Developer in writing (the "ROFR Notice") of such Owner's arms-length discussions for the sale of the Hotel Parcel upon the terms that such Owner is willing to accept from a bona fide third party offeror ("Bona Fide Offer") and setting forth the material terms of the Bona Fide Offer and such other terms as herein provided. Developer shall have ten (10) business days after Developer receives the ROFR Notice in which to notify the Owner of the Hotel Parcel in writing of its election to purchase the Hotel Parcel upon the terms set forth in the ROFR Notice. If Developer declines to exercise the ROFR Option or fails to give such written notice within the time period required, the Owner of the Hotel Parcel shall be free to sell the Hotel Parcel to the bona fide offeror pursuant to the terms set forth in the ROFR Notice for a period of six (6) months, upon which time the Owner of the Hotel Parcel's right to exercise the ROFR Option shall resume.

3. Closing. If Developer shall exercise the ROFR Option, then the closing of the purchase and sale of the Hotel Parcel (the "Hotel Closing") shall be held on or before that date which is sixty (60) days after the date Developer exercises the ROFR Option, as determined by Developer (subject to deferment as set forth in Section 5).

4. Title. The Owner of the Hotel Parcel shall convey marketable title to the Hotel Parcel by good and sufficient special warranty deed in fee simple absolute at the Hotel Closing, free and clear of all liens, security interests, defects, encumbrances, assessments, encroachments, marital rights, reservations, easements, licenses, leases, and restrictions, whatsoever except for: (a) real estate taxes and installments of assessments which are due and payable on or after the date of Hotel Closing; and (b) matters of record approved by Developer.

5. Conditions to Developer's Obligations to Close: Developer's obligations to close the purchase of the Hotel Parcel following Developer's exercise of the ROFR Option are hereby made expressly conditioned upon fulfillment (or waiver by Developer in writing) of the following:

(a) Title Commitment and Insurance: Developer shall have procured a title insurance commitment for the Hotel Parcel satisfactory to Developer in its reasonable discretion.

(b) Same Condition: The Hotel Parcel shall be in substantially the same condition at the Hotel Closing as it was in as of the date of the date of the exercise of the ROFR Option, reasonable wear and tear excepted. No condemnation of the Hotel Parcel shall have occurred and no casualty shall have occurred to the Hotel Parcel which shall remain unrepaired.

(c) Non-Foreign Affidavit: The Owner of the Hotel Parcel shall have executed and delivered to Developer a non-foreign transferor affidavit in form and substance reasonably satisfactory to Developer.

(d) Consents and Approvals: The Owner of the Hotel Parcel shall have delivered to Developer all necessary consents or approvals authorizing such Owner's sale of the Hotel Parcel to

Developer, in form and substance reasonably satisfactory to Developer and Developer's title company.

(e) Title: There shall have been no material change in the title, survey or environmental condition of the Hotel Parcel since the date of the exercise of the ROFR Option.

(f) Lien Affidavits: The Owner of the Hotel Parcel shall have executed and delivered to Developer lien affidavits in standard form warranting and holding Developer and Developer's title insurance company harmless against unpaid laborers', suppliers' and materialmen's liens and other similar statutory liens.

(g) Other Documents: The Owner of the Hotel Parcel shall have executed and delivered to Developer any and all documents and papers that may be customary or reasonably necessary in connection with the purchase and sale of the Hotel Parcel.

In the event that any of the foregoing conditions are not satisfied on or before the date of the Hotel Closing, Developer shall have the option of [i] closing this transaction; [ii] deferring the Hotel Closing until all conditions are satisfied; [iii] notifying the Owner of the Hotel Parcel that all of the conditions have not been satisfied or waived and that, therefore, Developer desires not to close this transaction, in which event all obligations of such Owner and Developer shall be cancelled and terminated (except as to breaches which occurred prior to such termination); or [iv] pursuing any other remedies that Developer may have pursuant to applicable law or at equity.

6. Costs and Prorations. The Owner of the Hotel Parcel and Developer agree that: (a) property taxes shall be pro-rated on a per diem basis based on the most recent tax bill available; and (b) all other revenues and costs shall be pro-rated on a per diem and equitable basis. The Owner of the Hotel Parcel shall pay for preparation of a deed and all other documents necessary to perform such Owner's obligations under this Exhibit C, excise tax (revenue stamps), and the commissions due any brokers claiming by or through such Owner. Developer shall pay all costs of recording, title examination, title insurance, survey and any inspections or investigations undertaken by Developer. Each party shall pay its own attorney's fees.

7. Deliveries. Following the exercise of the ROFR Option, upon request of Developer, the owner of the Hotel Parcel shall promptly deliver to Developer copies of all of the following information related to the Hotel Parcel (whether or not specifically requested by name or other identifier) which are in such Owner's possession or control: property tax information, title abstracts and opinions, title insurance policies, environmental studies and audits, notices from governmental entities or agencies or adjacent or nearby landowners, and all other information, documents, surveys, or studies of or related to the Hotel Parcel.

8. Risk of Loss or Damage. Until the Hotel Closing, the risk of loss or damage to the Hotel Parcel, except as otherwise provided herein, shall be borne by the Owner of the Hotel Parcel.

9. Specific Performance. In the event of a breach of this Exhibit C by the Owner of the Hotel Parcel, Developer shall have, in addition of all other rights provided herein, applicable law, or in equity, the right to specifically enforce the provisions of this Exhibit C (and appropriate injunctive relief may be applied for and granted in connection therewith), it being acknowledged by the Owner of the Hotel Parcel that monetary damages would be an inadequate remedy for breach of this Exhibit C, with the damages resulting from such breach being irreparable and immeasurable. All remedies of Developer hereunder shall be cumulative.

## True Copy Certification

I, Heather Townsend, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Heather Townsend  
Signature

State of Georgia

County of Fulton

Personally appeared before me, Deborah Lynn Goodman, a notary public for this county and state, Fulton County, Georgia who acknowledges that this Heather Townsend's certification of an electronic document is true and correct and whose signature I have witnessed.

Deborah Lynn Goodman  
Notary's Signature

My Commission Expires \_\_\_\_\_  
Notary' Seal (if on paper)



This instrument prepared by:  
Jon Goldberg, Esq.  
Troutman Sanders  
301 S. College  
Suite 3400  
Charlotte, NC 28202

Davidson County	REST
Recvd: 01/06/16 14:24	27 pgs
Fees:137.00 Taxes:0.00	
<b>20160105-0000934</b>	

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND  
EASEMENTS  
FOR  
ONE BELLEVUE PLACE – CIVIC TRACT**

**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
CIVIC TRACT - ONE BELLEVUE PLACE**

This DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR CIVIC TRACT - ONE BELLEVUE PLACE (this "Declaration") is dated effective as of December 31, 2015 and made by BELLEVUE REDEVELOPMENT ASSOCIATES, LP, a Delaware limited partnership ("Bellevue").

**RECITALS**

A. Bellevue is the owner of the real property legally described in Exhibit A attached hereto and incorporated herein (the "Commercial Property"), which Commercial Property is being developed by Bellevue as permitted under applicable local zoning ordinances as a multi-use development that may include (i) a retail area, (ii) office buildings, (iii) a hotel and (iv) such other uses as may be determined from time to time by Bellevue in accordance with this Declaration.

B. Bellevue is also the owner of the real property legally described in Exhibit B attached hereto and incorporated herein (the "Civic Property"), which Civic Property is being conveyed to Metropolitan Government of Nashville and Davidson County, a municipal corporation and political subdivision of the State of Tennessee ("Metro") on or about the date hereof to be developed as a civic development. The Commercial Property and the Civic Property are referred to herein collectively as the "Property."

C. Bellevue desires to preserve the values and amenities of the Property and to this end desires to subject the Property to the covenants, conditions, restrictions and easements hereinafter set forth, each and all of which is and are for the benefit of the Commercial Property and Civic Property and each current and future owner thereof and burden the Commercial Property and the Civic Property as set forth herein.

**DECLARATION**

NOW, THEREFORE, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, by this Declaration, does declare the Property is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges, liens and agreements set forth in this Declaration which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
GENERAL**

1.1 Definitions. The following words or phrases, when used in this Declaration shall have the following meanings:

(a) "Civic Property" shall mean the land described on Exhibit B attached hereto and incorporated herein, together with the Improvements and anticipated Improvements thereon.

(b) "Commercial Property" means the land described on Exhibit A attached hereto and incorporated herein, together with the Improvements and anticipated Improvements thereon.

(c) "Common Areas" shall mean all areas depicted on the Site Plan and labeled "Common Area". Developer hereby reserves the right to relocate the Common Areas provided that Developer shall not relocate the Common Areas which are depicted as "No Relocation Areas" on Exhibit A-1 attached hereto without the prior written consent of the Owner of the Civic Property.

(d) "Declaration" shall mean this Declaration of Covenants, Restrictions and Easements for One Bellevue Place – Civic Parcel and any amendment or supplement thereto enacted in accordance with the provisions hereof.

(e) "Designated Maintenance Items" shall mean the following items that are located within the Common Areas or within the rights-of-way within the Common Areas (including property in medians and entrances, but excluding any improvements maintained by the appropriate governmental authority):

(i) Private streets, driveways, roads and alleys, bridges and public streets and roads, if any, to the extent such public streets and roads are not maintained by the appropriate governmental authority.

(ii) Plants (including, but not limited to, trees, "tree save" areas, shrubs, flowers, ground cover and grass).

(iii) Light poles, fixtures, bulbs, traffic signals, wiring and all equipment related to the use thereof.

(iv) Traffic signs, parking signs, directional/wayfinding signs, warning signs, and other guide/informational signs.

(v) Sprinkler and irrigation systems (including water meter vaults and water meters used in connection with such systems).

(vi) Fences, decorative walls, retaining walls, sitting walls, sidewalks, steps and walking paths.

(vii) Outdoor furniture and benches.

(viii) Flag poles, flags, banners and seasonal decorations.

(ix) Signage relating to the operation and identification of the Civic Property that is located on the Commercial Property or the Common Areas.

(x) Sidewalks.



(xi) Storm water drainage lines, detention ponds, drainage easements, water lines, sewer lines and other utility lines and easements and all fixtures related thereto not maintained by the appropriate governmental authority.

(xii) Lakes, ponds, streams, fountains and other water amenities, including, but not limited to, pumps, pipes, drains, drainage, water and electrical lines, fountain parts, fountain lights or other decorative lighting within a water amenity, water jets, filters, chlorinators, nozzles, weirs, switches and related equipment, easements or housings, gravel, stone or concrete beds, walls, dams and other structural housing for water containment or detention and directional control, swings and gazebos.

(xiii) Entry features, including, without limitation, monument signs, ponds, fountains and landscaping.

Notwithstanding the foregoing, this Declaration imposes no obligation on Developer to construct or install any of the Designated Maintenance Items, unless otherwise provided herein.

(f) "Developer" shall mean Bellevue, and any other person or persons (each, a "Successor Developer") that succeed to the rights, duties, and obligations of Developer hereunder pursuant to a written document or instrument executed by an authorized representative of the Developer and an authorized representative of Successor Developer, which is filed in the Davidson County Office of the Register and which sets forth and outlines the assignment by Developer of its rights and duties hereunder as Developer to the Successor Developer and the assumption by Successor Developer of the obligations of Developer hereunder to the extent arising following the date of such assignment.

(g) "Improvements" shall mean any and all physical structures, facilities, alterations or changes of any type or nature made to or upon any portion of the Property from time to time, including, without limitation, buildings, parking lots, parking structures, roadways, driveways, ramps, loading areas, mechanical equipment, window coverings, signs, utilities, fences, antennae, walls, lawns, screens, landscaping, park areas, berming, hedges, trees, mass plantings, poles, grading changes, plazas, walkways, bridges, recreational facilities, exterior lighting facilities, drainage structures, curbs, retaining walls, grates, fountains, ponds and waterways.

(h) "Owner" shall mean each and every person or entity who is a record owner of a fee simple interest in a Parcel. If such Parcel is subject to a condominium, townhouse or other multi-owner regime, the owners' association representing such multi-owner regime, and not individual unit owners, shall be deemed the "Owner" thereof.

(i) "Parcel" shall mean a platted lot within the Property. The plural form of this term as used in this Declaration is "Parcels."

(j) "Permittees" shall mean (i) the Owners, (ii) any person or entity from time to time entitled to the use and occupancy of any portion of a building under an ownership right or any lease, sublease, license, concession, or other similar agreement, and (iii) the respective

officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees of the Owners.

(k) "Project" shall mean the Property, together with the Improvements and anticipated Improvements on the Property.

(l) "Property" shall have the meaning set forth in the Recitals above.

(m) "Site Plan" shall mean the site plan attached hereto as Exhibit C.

(n) Other terms used in this Declaration are defined in various provisions contained herein.

1.2 Duties of the Developer Except as otherwise provided herein, the Developer shall operate, keep and maintain any Designated Maintenance Items which are installed by or on behalf of Developer and the Common Areas in a first class manner and in a clean and attractive condition at all times, ensuring that the Common Areas comply in all respects with governmental laws, codes, rules and regulations, including those which address fire and human health and safety (except to the extent that any non-compliance is caused by an Owner which is not Developer, in which event such Owner shall bring same into compliance at such Owner's cost and expense).

## ARTICLE 2 ASSESSMENTS

2.1 Annual Assessment. Commencing on the date that a building permit has been issued by the City of Nashville or Metro for the construction of any type of improvement on the Civic Property (the "Civic Permit Date"), the Owner of the Civic Property hereby covenants and agrees to pay the Developer, or to an independent entity or agency which may be designated by the Developer to receive such monies, a fixed annual fee in an amount equal to Five Thousand and No/100 Dollars (\$5,000.00) for each fiscal year. Such annual assessment shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month and shall be delinquent if not paid by the tenth day of such month. Such annual assessment shall increase by the fixed amount of three percent (3%) per annum. Partial years shall be prorated based upon the remaining months in the year from the Civic Permit Date. Notwithstanding the foregoing to the contrary, the terms of this Section 2.1 shall not apply to Metro so long as Metro is the Owner of the Civic Property.

2.2 Personal Obligation for Payment of Assessments. The annual assessments provided for in Section 2.1 shall be the personal and individual debt of the Owners. No Owner may exempt itself from liability for such assessments.

## ARTICLE 3 EASEMENTS

3.1 Access Easement. The Developer does hereby create, grant, convey, and confirm unto the Owner of the Civic Property, its successors, assigns and successors-in-title, and their Permittees, for the benefit of the Owner of the Civic Property, its successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement for pedestrian and vehicular ingress and egress over and across those portions of the Common Areas now or hereafter developed with driveways, walkways, or roadways for the flow of traffic around buildings for as long

as such driveways, walkways and roadways are improved for such purpose, including, without limitation, a non-exclusive, perpetual and irrevocable easement for pedestrian and vehicular ingress and egress over and across the access roadway (and curb cuts therefor) located in the Commercial Property which is necessary to provide access from Sawyer Brown Road to the Civic Parcel, as depicted on the Site Plan. The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Civic Property. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, all such portions of the Common Areas (except to the extent dedicated to a public authority) so that such Common Areas at all times are in good order, condition and repair and in a level and smooth condition, reasonably free of potholes and other defects. Nothing herein permits the Owner(s) of the Civic Property nor its Permittees to park vehicles in the Common Area or otherwise on the Commercial Property.

3.2 Stormwater Easement. The Developer does hereby create, grant, convey and establish on, over, across and through the Commercial Property for the benefit of the Owner of the Civic Property, its successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement for stormwater drainage from the Civic Property over, across and into the drainage lines and other drainage facilities to be constructed on the Commercial Property (the "Stormwater Detention Facilities"). The Stormwater Detention Facilities are depicted on the Site Plan. The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Civic Property. The contour, size and location of such Stormwater Detention Facilities may, from time to time, be altered, modified, updated or changed by the Developer; provided, further, that in no event shall the Owner of the Civic Property be deprived (except during periods of construction or maintenance) of the on-going use of such Stormwater Detention Facilities, and the Owner of the Civic Property shall continue to have use of such Stormwater Detention Facilities after such alterations, modifications or changes have been undertaken and completed. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, the portion of the Stormwater Detention Facilities located on the Commercial Property (except to the extent dedicated to a public authority) so that the Stormwater Detention Facilities are at all times in good order, condition and repair.

3.3 Sanitary Sewer Easement. The Developer does hereby create, grant, convey and establish on, over, across and through the Commercial Property for the benefit of the Owner of the Civic Property, its successors, assigns and successors-in-title, and their Permittees, a non-exclusive, perpetual and irrevocable easement to allow the Owner of the Civic Property to use the sanitary sewer lines as shown on the Site Plan (the "Sanitary Sewer System") for transporting water and sewage through the Sanitary Sewer System. The Sanitary Sewer System is depicted on the Site Plan. The right and easement granted hereunder shall be appurtenant to and pass with the title to every portion of the Civic Property. Once constructed, the Developer shall manage, maintain, repair, and, when necessary, replace, the portion of the Sanitary Sewer System located on the Commercial Property (except to the extent dedicated to a public authority) so that the Sanitary Sewer System is at all times in good order, condition and repair.

3.4 Common Areas Easement. Subject to any rights of Developer as set forth in this Declaration, the Developer grants to the Owner of the Civic Property, its successors and assigns, and their Permittees, for the benefit of the Owner of the Civic Property, its successors and assigns, and their Permittees, a non-exclusive, perpetual and irrevocable easement of use and enjoyment in and to the Common Areas, which right and easement shall be appurtenant to and pass with the title to every portion of the Civic Property. Notwithstanding the recordation of any map or any other action by the Developer, the Common Areas shall not be considered as dedicated to the use and enjoyment of the

general public except to the extent same are actually dedicated by Developer as set forth below. Notwithstanding the foregoing or anything in this Declaration to the contrary, for so long as the Developer owns any portion of the Common Areas, Developer may dedicate portions of the Common Areas to the City of Nashville, Tennessee, Davidson County, Tennessee, or to any other local, state or federal governmental or quasi-governmental entity; provided, however, that such dedication shall not leave the Civic Property in a non-conforming status with regard to setbacks, zoning or other governmental regulations. The Developer shall be responsible for the upkeep and maintenance of the Common Areas until such time, if ever, as same are dedicated to public authorities as set forth above. The Developer shall maintain the Common Areas at all times in a good and clean condition and state of repair comparable to other mixed-use developments of a similar age and location in the greater Nashville, Tennessee area, in compliance with all laws, rules, regulations, orders and ordinances of any governmental agency exercising jurisdiction over, and in compliance with the provisions of this Declaration.

3.5 Temporary Construction Easement. Developer hereby reserves, for the benefit of Developer, a temporary construction easement over the Civic Property for purposes of (i) grading (including, without limitation, grading the Civic Property pursuant to Bellevue's plans which Metro approved prior to the date hereof) and (ii) constructing and installing utility lines and other utility facilities. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary to provide the economical and safe construction installations. The terms of this Section 3.5 shall expire on the date which is two (2) years following the date hereof.

3.6 Plat Easements. Developer hereby consents to and grants as owner of the Civic Property that certain Access and P.U.D.E easement over, under and upon the Civic Property that is shown, granted and created by the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) Dated December 11, 2015 and Prepared by Barge, Waggoner, Sumner & Cannon, Inc. as File No. 3333705 and recorded on December 18, 2015, as Document Number 20151218-0127344.

3.7 Certain Exceptions. The Owners acknowledge and agree that there may, from time to time, be street festivals within the Project and that during those festivals certain parts of Project that are developed with driveways, walkways, roadways, or parking areas may not be available to provide access or parking. If such festivals have received the prior written approval of Developer, then during and for twenty-four (24) hours before and twenty-four (24) hours after the occurrence of any festivals, such right of access and parking will be suspended to the extent necessary to accommodate the requirements of such festivals.

## **ARTICLE 4 CONSTRUCTION**

4.1 Temporary Structures and Storage Areas. Except during any reasonable time period as is necessary for the completion of construction of such Improvements, no partially completed Improvements or other structures of a temporary nature shall be permitted to exist on any portion of the Property.

4.2 Diligent Construction. All construction, landscaping or other work that has been commenced on any portion of the Property must be continued with reasonable diligence to completion in accordance with the provisions of this Article 4.

4.3 Performance of Construction. Every contractor and subcontractor constructing Improvements within the Property shall perform such construction in compliance with all laws, rules, regulations, orders and ordinances of any governmental agency exercising jurisdiction over and in compliance with the provisions of this Declaration.

4.4 Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Unless otherwise required by the applicable public utility, transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the Improvements constructed on the Property or located elsewhere on such portion of the Property provided they are adequately screened from view of the public.

4.5 Landscaping. Each Owner shall install on their Parcel landscaping for all surface parking lots, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration, its approved site plan, and applicable ordinances of the City of Nashville and/or Davidson County, Tennessee. Any areas not covered by buildings, parking lots or other paved areas, including buffer strips and other undeveloped land areas, shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas in a uniform manner.

4.6 Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, temporary sediment traps, diversion ditches, storm water inlet protection or retention pond and temporary seeding, to the extent deemed reasonably necessary, shall be installed by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Parcel in question in accordance with all governmental requirements. All sediment control measures located on any Parcel must be regularly cleaned out and maintained by each Owner of such Parcel until such portion of the Property has been permanently stabilized with respect to soil erosion.

4.7 Construction Restrictions and Standards. Any Owner performing, or causing to be performed, construction work on a Parcel must perform, or cause to be performed, such work in a good, workmanlike, safe, expeditious, and diligent manner, and use reasonably prudent methods so as to minimize any disruption or inconvenience caused by such work to the other improved portions of the Project and to the other Owners and their Permittees. With respect to any alterations or betterments other than the initial Improvements to be located on any Parcel, any construction zone and staging area shall only be as large as is reasonably necessary and the size thereof shall be reduced to the extent practical during the construction period. The person or entity performing such work must use appropriate methods customarily utilized in order to control dust, noise, and other deleterious effects of such work in a populated or densely developed area. The Owner of the Parcel upon which such work is conducted must repair at its own cost and expense any and all damage caused by such work. Effective on and after the date the "Sprouts" grocery store located on the Commercial Property is open for business, (a) during the course of construction at the Project, no construction vehicles shall be allowed to access the Project utilizing the two entrances closest to the shopping center to be located on the Commercial Property and located on US 70 South or to travel on

the internal drive lanes within the Commercial Property and (b) all construction related traffic shall access the Project from Sawyer Brown Road.

4.8 Alterations. If, following the initial construction of Improvements on the Civic Property, the exterior of any such Improvements shall be replaced or materially altered, the plans and specifications for such replacements and alterations shall be subject to the prior written consent of Developer, such consent not to be unreasonably withheld, conditioned or delayed.

## **ARTICLE 5 MAINTENANCE OF PARCELS**

5.1 Duty of Maintenance. Except to the extent that such maintenance is an obligation of the Developer as provided elsewhere herein, each Owner, as applicable, at its sole expense is responsible for (a) keeping its Parcel and all Improvements located thereon in a well-planned, clean, and attractive condition at all times, consistent with the first-class nature of the Project, which obligation, includes, but is not limited to: disposal of litter, lawn mowing, tree and shrub pruning; watering; replacement of landscaping; regular sweeping or washing, or both, as required, of all pavement areas; and striping of parking areas, (b) ensuring that its Parcel complies in all respects with all governmental laws, codes, rules and regulations, including those which address fire and human health and safety and (c) maintaining and repairing any underground and above ground lines, equipment and facilities for the delivery of utility services, which includes, but is not limited to, storm water, sanitary sewer, water (fire and domestic), sprinkler and irrigation, gas, electrical, cable television, telephone and other communication lines located on such Owner's Parcel which exclusively serve such Parcel, unless the same is otherwise maintained by a public utility company and/or governmental authority having jurisdiction.

## **ARTICLE 6 INSURANCE**

6.1 Basic Owner Insurance Requirements. Each Owner must carry for its Parcel or, if a third party is the occupant the Parcel, may cause such occupant to carry the following insurance:

(a) Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence;

(b) Workers' compensation as required by any applicable law or regulation and employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease; and

(c) Automobile Liability Insurance for owned, hired and non-owned automobiles with limits of liability that shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

6.2 Property Insurance. Effective upon the commencement of construction of any building on its Parcel and so long as such building exists, an Owner shall carry, or cause to be carried, property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

6.3 Notwithstanding the foregoing to the contrary, the terms of this Article 6 shall not apply to Metro so long as Metro is the Owner of the Civic Property.

#### **ARTICLE 7 INDEMNITY**

To the fullest extent permitted by law, each Owner agrees to defend, protect, indemnify and hold harmless each other Owner from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any person located on the Parcel owned by each indemnifying Owner to the extent arising from the negligence or misconduct of such Owner; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Owner, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. Notwithstanding the foregoing to the contrary, Metro shall not be required to indemnify any other Owner or party in connection with this Article 7.

#### **ARTICLE 8 CASUALTY AND CONDEMNATION**

8.1 Casualty. In the event any Improvements located on any Parcel are damaged or destroyed by fire or other casualty, the Owner of such Parcel must, within a reasonable period of time not to exceed ninety (90) days, either (a) contract to repair, restore and rebuild such Improvements and cause such buildings situated on such Parcel to be repaired, restored and rebuilt to their prior condition in a diligent manner and complete such repair, restoration, or rebuilding within the Required Time Period (as defined below), or (b) in the event the Owner of the affected Parcel determines not to repair, restore or rebuild such damaged or destroyed buildings or fails to complete such repair, restoration, or rebuilding within the Required Time Period, such Owner must, within sixty (60) days after the expiration of such ninety (90)-day period (if the Owner elects not to repair, restore, or rebuild) or the expiration of the Required Time Period (under all other circumstances) raze all of the damaged Improvements on its Parcel, clear its Parcel of all debris resulting from such razing, and seed or sod the razed portion of the Parcel with grass. Notwithstanding the foregoing, the Owner of such Parcel must repair, restore, and rebuild all streetscapes, pedestrian walkways, and other linkages to the remainder of the Project which were damaged or destroyed as a result of such casualty within what would have been the Required Time Period had such Owner elected to repair, restore, and rebuild. The Required Time Periods for partial damage or destruction of the Improvements on a Parcel are one hundred eighty (180) days and for complete destruction of the Improvements on a Parcel are two hundred seventy (270) days. Notwithstanding the foregoing, with respect to Designated Maintenance Items and Improvements in the Common Areas, the Developer must proceed under option (a) described above.

8.2 Condemnation. The Owner of any Parcel taken by condemnation or eminent domain must promptly repair, restore, and rebuild the remaining portion of such Parcel as nearly as possible in the circumstances to the condition which existed prior to such condemnation or eminent domain without contribution from any other Owner; provided, however, in the event the Owner of such Parcel determines that it is no longer feasible to conduct business within the Improvements on such partially-condemned Parcel (which determination cannot be made arbitrarily), such Owner must raze any remaining Improvements on such partially condemned Parcel, clear such Parcel of all debris, and

seed or sod such Parcel with grass. If an Owner elects to raze the Improvements, then the Owner must do so within ninety (90) days after the date of such taking (defined as the day title is actually transferred) and if the Owner does not do so within such time period, the Owner will be deemed to have elected to repair and restore. Notwithstanding the foregoing, such Owner must repair, restore, and rebuild all streetscapes, pedestrian walkways, and other linkages to the remainder of the Project which were affected by such taking. Any repair, restoration, or rebuilding (whether of all Improvements or pursuant to the terms of the immediately-preceding sentence) must be completed within one hundred eighty (180) days after the date of such taking. Any award of compensation or damages (whether obtained by agreement or by judgment, verdict or order in a legal proceeding) resulting from the taking of any Parcel, or any portion of a Parcel, by exercise of right of condemnation or eminent domain by any governmental authority or other public or quasi-governmental authority must be distributed in accordance with the terms of the agreement, or the judgment, verdict or order made in the proceedings concerning such taking. In the event of any sale of any Parcel, or any portion thereof, under threat of condemnation or eminent domain, such Parcel, or applicable portion of such Parcel, will for all purposes be deemed to have been "taken" as that term is used in this Section 8.2, and the net amount of the price received for such Parcel after deduction of the expenses of the sale borne by the Owner of the Parcel taken will be deemed to constitute an "award" as that term is used in this Section 8.2. However, nothing contained in this Section 8.2 entitles any Owner to share in any award made to any other Owner whose Parcel, or portion of a Parcel, is taken, other than as provided above and to the extent an award is made for the interest of such Owner created by this Declaration in the Parcel taken.

## **ARTICLE 9**

### **PROHIBITED USES AND PERMITTED USES**

9.1 General. No use shall be permitted on any portion of the Project which is not allowed under applicable public codes and ordinances either already adopted or as may be adopted by the City of Nashville or other controlling public authority. Each Owner or other user of any portion of the Project shall comply at all times in every respect with this Declaration, and any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Project, specifically including, but not limited to, the zoning restrictions of the City of Nashville applicable thereto as they exist from time to time. In the event a conflict exists between any such public requirement and any requirement of this Declaration, the more restrictive requirement shall prevail. Where a governmental requirement does not clearly conflict with the provisions of this Declaration, but permits action that is different from that required by this Declaration, the provisions of this Declaration shall prevail. All portions of the Project shall be developed in accordance with this Declaration.

9.2 Prohibited Uses. Certain uses are prohibited throughout the Project, as more particularly set forth on Exhibit D attached hereto. No Owner may use all or any part of its Parcel for any use listed in Exhibit D attached hereto which uses are collectively defined herein as the "Prohibited Uses." Certain additional uses are prohibited on the Civic Property and are set forth on Exhibit E. The Civic Property may not be used for any use that is listed in Exhibit E, which uses are collectively defined herein as the "Parcel Specific Prohibited Uses". The Parcel Specific Prohibited Uses benefit the Commercial Property. The Owner of the Commercial Property may, at its option, in its sole determination and subject to any conditions solely determined by such Owner, waive the enforcement of any Parcel Specific Prohibited Use upon written request from the Civic Property Owner. The Commercial Property Owner shall be under no obligation at any time to provide such



waiver. The Developer shall enforce the Prohibited Uses, the Parcel Specific Prohibited Uses and the other restrictions on use set forth in this Article 9 and shall have all rights and remedies at law and in equity, including without limits, the right to bring an action for injunctive relief.

9.3 Civic Property Permitted Use. The development and use of the Civic Property shall be restricted to a park, community center, police station, or office building that is owned and occupied by a governmental entity. No other use is permitted on the Civic Property, including without limitation, the uses set forth on Exhibit D and Exhibit E.

9.4 Commercial Property Permitted Use. The development and use of the Commercial Property is for retail shopping centers, office buildings, a hotel, open space and common areas and any and all other uses that may be permitted by applicable law, except for a use that is set forth on Exhibit D attached hereto.

9.5 Obstructions. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in such areas by any Owner, nor shall anything be altered, constructed or planted in, or removed from such areas, without the prior written consent of the Developer.

9.6 Waste; Prohibition Against Dumping. No portion of the Property may be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any portion of the Property except on a temporary basis in sanitary containers. No dumping of trash, garbage, sewage, sawdust, organic or inorganic waste or other similar materials shall occur and no unsightly or offensive material shall be placed on the Common Areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Common Areas.

9.7 Additional Prohibited Activities. The following types of activities are prohibited, unless authorized by the Developer:

- (i) Dumping backfill into Common Areas.
- (ii) Excavating soil from Common Areas.
- (iii) Parking in a Common Area, except as otherwise designed by Developer.
- (iv) Stacking or storing supplies or equipment in the Common Areas.
- (v) Changing site grade so as to cause drainage problems in the Common Areas.
- (vi) Locating temporary construction buildings in the Common Areas.
- (vii) Disposing of toxic or hazardous materials in the Common Areas.

Notwithstanding the provisions of this Section 9.7, the Developer may establish and maintain, from time to time within any Common Area, storage areas for mulch piles, stacked firewood, rocks and other natural materials for the use and benefit of the Common Areas.

9.8 Septic Systems. No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

## **ARTICLE 10 DEFAULT**

10.1 Notice of Default. The occurrence of any one or more of the following events constitutes a material default and breach of this Declaration by the non-performing Party (the "Defaulting Party"):

(a) The failure to make any payment required to be made hereunder to another Party or Developer within ten (10) days after the due date.

(b) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (a) above, within thirty (30) days after the giving of a notice by another Party (the "Non-Defaulting Party") or Developer specifying the nature of the default claimed. Notwithstanding the foregoing, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party or Developer, as the case may be, of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party shall be entitled to additional time, not to exceed thirty (30) additional days, to cure such default.

10.2 Right to Cure Default. With respect to any default under Section 10.1(b), any Non-Defaulting Party or Developer may cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party following the expiration of any applicable cure period; provided, however, that if such default constitutes an emergency condition, the Defaulting Party is only entitled to such advance notice as is reasonably possible under the circumstances or, if necessary, no notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party or Developer which issued such notice may enter upon the Parcel of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. If any Non-Defaulting Party or Developer cures a default, the Defaulting Party shall reimburse the Non-Defaulting Party or Developer, as the case may be, for all costs and expenses incurred in connection with such curative action within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

10.3 Right to Lien. The cost and expense incurred by a Party to cure a default of the type set forth in Section 10.1(b) in accordance with Section 10.2, plus Interest on all such sums, shall constitute a lien against the Defaulting Party's Parcel. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Property is located by the Party making such claim. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Property is located. The lien shall be subject and subordinate to any mortgage or deed of trust which is of record before the claim of lien is placed of record. Notwithstanding the foregoing to the contrary, the terms of this Section 10.3 shall not apply to Metro so long as Metro is the Owner of the Civic Property.

10.4 Additional Remedies. Each Non-Defaulting Party may prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to

violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. All of the remedies permitted or available to a Party under this Declaration or at law or in equity are cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action of law or in equity to enforce the terms and provisions of this Declaration, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including appellate proceedings, in addition to any remedy granted.

10.5 Interest. Any time a Party or Developer, if any, does not pay any sum payable hereunder to another Party within five (5) days of the due date, such delinquent Party or Developer must pay interest ("Interest") on such amount from the due date to and including the date such payment is received by the Party entitled thereto, at the prime rate, plus three percent (3%). As used herein, "prime rate" means the highest rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates" or similar national publication.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Binding Effect and Duration. The provisions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of the Owners of Parcels and their respective legal representatives, heirs, successors and assigns for the maximum period of time permitted by applicable law. The easements created by this Declaration shall continue in perpetuity unless terminated by a document that is executed by all then current Owners.

11.2 Amendment. Except as otherwise provided in this Declaration, this Declaration may be amended only by an instrument executed by (i) Developer, (ii) the Owner of the majority of the Civic Property (based on acreage) and (iii) any other Owner whose rights would be materially decreased or obligations materially increased as a result of such amendment.

11.3 Severability. To the extent that any portion of this Declaration is unenforceable or inapplicable for any reason (for example, but without limitation, because it is generally unenforceable or inapplicable or is unenforceable or inapplicable in specific circumstances or in connection with a particular person or entity), this Declaration and the other provisions of this Declaration will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision were not contained in this Declaration (generally or in the specific circumstances in question, as appropriate). Furthermore, to the extent permitted under applicable law, a substitute provision that would be enforceable or applicable and which would achieve the results intended by the unenforceable or inapplicable provision will be deemed substituted into this Declaration (either generally or in the specific circumstances in question, as appropriate).

11.4 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt or refusal, or sent by electronic mail (with a copy sent by one of the other methods specified herein). The initial addresses of the parties shall be:

To Bellevue:

Bellevue Redevelopment Associates, LP  
c/o Branch Properties, LLC

3340 Peachtree Road NE, Suite 600  
Atlanta, Georgia 30326  
Attn: Jesse Shannon

Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address.

11.5 Mortgagee's Rights. An Owner must send simultaneous copies of any notices of default relating to a particular Parcel to the mortgagee of such Parcel as long as such Owner has previously received a request to do so from such mortgagee together with a specific address to which such notices must be sent. The mortgagee will be given thirty (30) days from the date of such notice in which to cure such default should it so elect; provided, however, if such default results, or could result, in any imminent danger to any portion of the Project or to any person, then the cure period specified above will be decreased to ten (10) days.

11.6 Estoppel. Each Owner (the "Requesting Owner") shall, from time to time, within ten (10) business days after receipt of written request from the other Owner (the "Responding Owner"), execute, acknowledge and deliver to the Requesting Owner or to any existing or prospective purchaser or mortgagee designated by the Requesting Owner, a certificate (the "Estoppel Certificate") stating, to the extent applicable:

(a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;

(b) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the Requesting Owner and, if so, specifying the nature and extent thereof;

(c) the nature and extent of any set-offs, claims, counterclaims, and/or defenses then being asserted or capable of being asserted after giving the notice, if any, required hereunder or otherwise known by the Responding Owner against the enforcement of the Requesting Owner's obligations hereunder;

(d) the total amount of all sums owed hereunder and all liens being asserted or capable of being asserted after giving notice, if any, required hereunder under the provisions of this Declaration describing the applicable provision or provisions and the details of any such lien claim;

(e) the current address or addresses to which notices given to Responding Owner are to be mailed; and

(f) such other facts or conclusions as may be reasonably requested.

11.7 No Merger. Unless otherwise clearly indicated to the contrary in a written, recorded document executed by all then current Owners, in no event will there be a merger of the dominant and servant tenements in the Parcels by virtue of the present or future ownership of any portion of said tenements being vested in the same person or entity, but instead the easements and servitudes created pursuant to the terms of this Declaration will not be extinguished by such vesting in common ownership and the dominant and servient tenements will be kept separate.

11.8 Owner's Obligation to Ensure Compliance. Although an Owner may impose upon a third party (usually, a tenant) the obligation to comply with and perform the duties of the Owner under this Declaration, such imposition does not free the Owner from the obligation to comply with and perform the duties of the Owner under this Declaration, which obligation continues to rest fully and completely with the Owner.

11.9 No Joint Venture or Partnership. None of the terms or provisions contained in this Declaration creates, or can be deemed to create, a partnership between or among the Owners in their respective businesses, or otherwise, nor can this Declaration cause the Owners to be considered joint venturers or members of any joint enterprise or association or render any of said Owners liable for the debts or obligations of any other of said Owners.

11.10 No Public Dedication. Nothing in this Declaration can be deemed to be a gift or dedication of any portion of the Project, or of any Parcel, or any portion of the Project or a Parcel, to the general public, for the general public or for any public use or purpose whatsoever, it being the intent that this Declaration be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private real estate development on private property solely for the benefit of the Owners, except that certain easements and rights-of-way within the Project have been so dedicated by separate documents and may in the future be dedicated by separate documents.

11.11 Force Majeure. Whenever performance is required of any Owner under this Declaration, that Owner must use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance is delayed or prevented at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or any other cause beyond the reasonable control of an Owner obligated to perform hereunder (financial inability, imprudent management, failure to meet the obligation to carry insurance, or negligence excepted), then the time for performance as herein specified will be appropriately extended by the amount of the delay actually so caused.

11.12 Personal Liability. Each Owner now or hereafter owning any Parcel is personally liable for performance of all covenants, obligations and undertakings set forth in this Declaration insofar as the same affect the Parcel so owned and which accrue during the period of such ownership. All such personal liability terminates upon the conveyance by an Owner of its ownership interest in its Parcel when, but not until, the transferring Owner obtains from its transferee a written assumption agreement of all of the obligations of the transferor under this Declaration. Notwithstanding the foregoing, however, the transferring Owner is not released from liability hereunder for its default in the performance of any provision of this Declaration occurring or accruing prior to any such transfer. In addition, any transferring Owner must use its good faith and diligent efforts to deliver notice to the Developer of such sale, transfer, conveyance or other assignment, which notice must include a legal description of the Parcel and the name and address of the transferee.

11.13 Attorney's Fees. In the event any Owner brings suit against any other Owner concerning any matters provided for herein, the prevailing Owner is entitled to recover from the other Owner reasonable attorneys' fees and costs of court in connection with such suit. As used herein, a "prevailing Owner" includes, without limitation, an Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

Notwithstanding the foregoing to the contrary, the terms of this Section 11.13 shall not apply to Metro so long as Metro is the Owner of the Civic Property.

11.14 Entire Agreement. This Declaration constitutes the entire agreement and understanding between the Owners and supersedes all prior agreements and understandings, if any, concerning the subject matter hereof, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning the subject matter of this Declaration other than those expressly herein set forth and any properly entered into amendments of this Declaration.

11.15 Headings. The headings, captions, numbering system, etc. are inserted only as a matter of convenience and under no circumstances will they be considered in interpreting the provisions of this Declaration.

11.16 Number and Gender. Where required for proper interpretation, words in the singular tense includes the plural, and vice versa; the masculine gender includes the neuter and the feminine, and vice versa.

11.17 Applicable Law. This Declaration is to be construed under and in accordance with the laws of the State of Tennessee and the laws of the United States applicable to transactions in Tennessee. All of the obligations contained in this Declaration are performable in Davidson County, Tennessee.

***SIGNATURE PAGE TO FOLLOW***

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed to be effective as of the date first written above.

**BELLEVUE REDEVELOPMENT ASSOCIATES,  
LP, a Delaware limited partnership**

By: Branch Retail GP, LLC, a Georgia limited liability company, its general partner

By: Richard H. Lee  
Name: Richard H. Lee  
Title: Authorized Signatory

STATE OF GEORGIA  
COUNTY OF FULTON

Personally appeared before me, the undersigned, a Notary Public, RICHARD H. LEE, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the AUTHORIZED SIGNATORY of Branch Retail GP, LLC, a Georgia limited liability company, and is authorized to execute this instrument as general partner of Bellevue Redevelopment Associates, LP. AUTHORIZED SIGNATORY

WITNESS my hand and Official Seal at office, this 30<sup>th</sup> day of December, 2015.

Marianne Boggs  
Notary Public

My Commission Expires 5-22-2018



## **EXHIBIT A**

### **COMMERCIAL PROPERTY LEGAL DESCRIPTION**

#### **Lot 1 (Parcel 187)**

Being Lot 1 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.

#### **Lot 4 (Parcel 190)**

Being Lot 4 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.

#### **Lot 8 (Parcel 378)**

Being Lot 8 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.

#### **Lot 9 (Parcel 379)**

Being Lot 9 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.



## DEPICTION OF NO RELOCATION AREAS



## **EXHIBIT B**

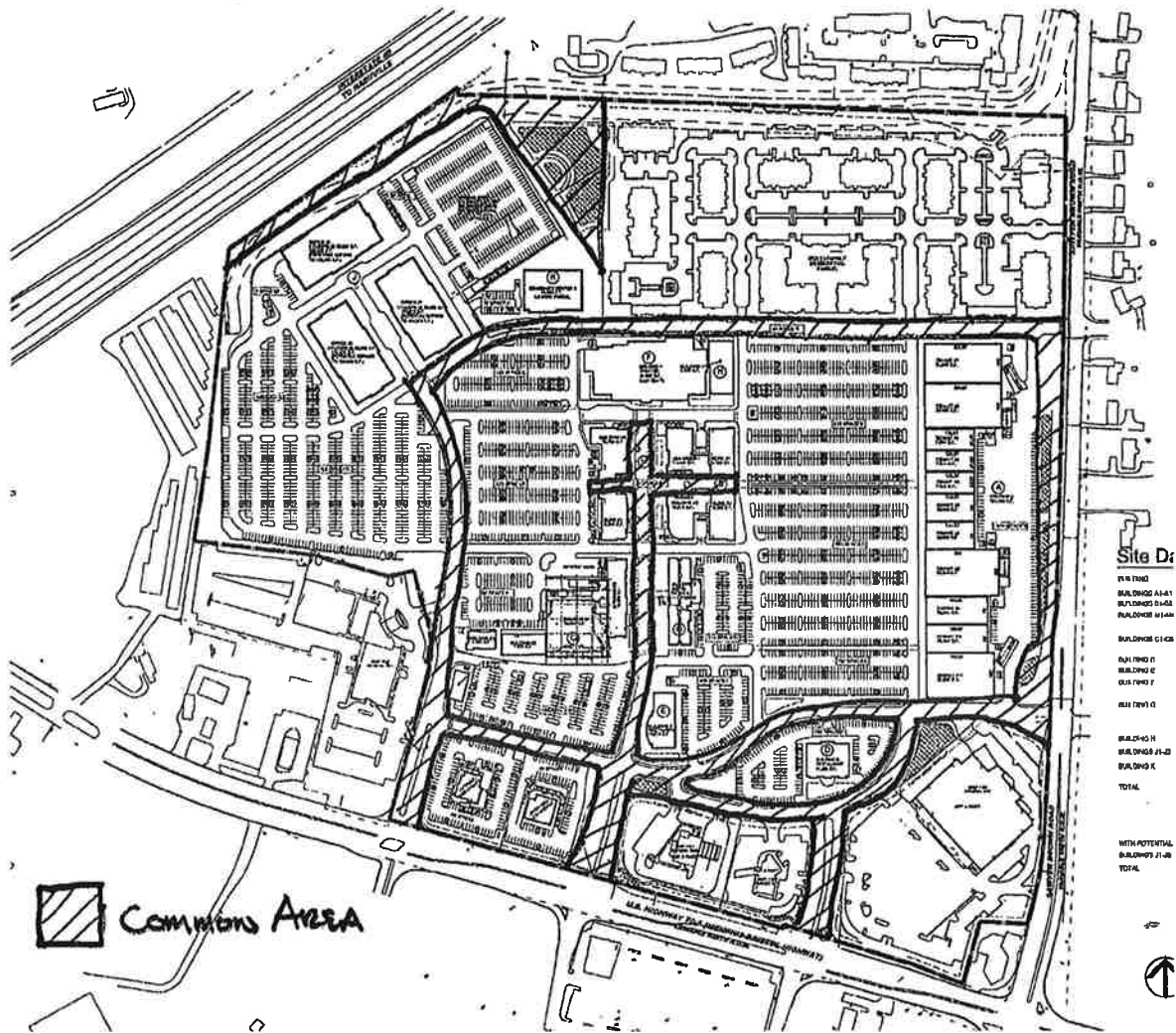
### **CIVIC PROPERTY LEGAL DESCRIPTION**

#### **Lot 3 (Parcel 189)**

Being Lot 3 of the Final Subdivision Plat of One Bellevue Place (Formerly Lot Nos. 3, 4, 5, 8 & 9 of the First Revision Resubdivision of Lots 3, 4, 5, 6, 7 & 8 Bellevue Center of Record in Plat Book 7900, Page 473 and Part of Lot 1, and Lot 2 of the First Revision Bellevue Center of Record in Plat Book 6900, Page 718 and Lot Nos. 8 and 9 of the Resubdivision of Lot 8, Bellevue Center of Record in Inst. No. 20000518-0049868, R.O.D.C) of record in Instrument No. 20151218-0127344, R.O.D.C.

## EXHIBIT C

### SITE PLAN



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

## **EXHIBIT D**

### **PROHIBITED USES**

1. Massage parlor (provided, this shall not prohibit the offering of therapeutic massages by gyms, spas or retailers such as Massage Envy), adult book store, peep show store, head shop store or any other similar store or club in which a material portion of its inventory includes obscene or pornographic materials (as determined by a court of competent jurisdiction), nude photos, sexual devices, magazines, videos, tapes or objects depicting nudity or sexual activity and other similar items, or any store or club whose activities include the display of partially or totally nude males or females (whether topless or bottomless or otherwise);
2. Establishment displaying or exhibiting illegal drug-related paraphernalia or materials;
3. Dance or music hall, dancing ballroom or establishment, banquet hall, night club or discotheque except as incidental to any occupant's customary business;
4. Training school or educational facility, including, but not limited to, beauty school, barber college, place of instruction, school of any nature, library, reading room or any business catering primarily to students or trainees rather than to customers;
5. Public or private nuisance or use emitting obnoxious or offensive odors, sounds or vibrations outside of any building;
6. Gambling facility or operation, including, but not limited to, any so-called "off-track" or sports betting parlor, gaming, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices; provided, however, that this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, including bingo so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;
7. Manufacturing facility, factory or industrial usage, warehouse not incidental to retail sales, processing or rendering plant, operation used primarily as a storage warehouse operation, or any assembling, manufacturing, refining, smelting, agricultural, or mining operation;
8. Central laundry, dry cleaning plant, dry cleaner or laundromat; provided, however, that this prohibition shall not be applicable to nominal supportive facilities or on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Commercial Property is located;
9. Selling or leasing automobiles, trucks, trailers, motorcycles, recreational vehicles, boats or other motor vehicles (new or used) but this prohibition shall not prevent such goods from being reasonably displayed by any occupant nor shall this prohibition limit the sale of boats and recreational vehicles from a sporting goods store;
10. Mobile home park, trailer park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

11. On-site drilling for and/or removal of subsurface substance, dumping, disposing, incineration, or reduction of garbage or refuse (exclusive of garbage compactors which shall be screened from public view);
12. Veterinary hospital or animal raising or boarding facility; provided, however, that this prohibition shall not prohibit pet shops and veterinarians from incidentally operation within larger pet supply facilities or businesses;
13. Funeral parlor or mortuary;
14. Auction house or flea market operation; and
15. Activities involving the hazardous use of fire or explosives; provided, however, that this shall not prohibit the exhibition of fireworks at the Project, on special occasions only, by qualified fireworks handlers.

**EXHIBIT E****PARCEL SPECIFIC PROHIBITED USES****THAT APPLY TO THE CIVIC PROPERTY**

<b><u>PROHIBITED USE DESCRIPTION</u></b>	<b><u>PARCEL BENEFITTED</u></b>	<b><u>PARCEL BURDENED</u></b>
The operation, sale, rental or distribution, either singly or in any combination, of any of the following activities and/or merchandise: (i) the operation of a grocery store, meat or seafood market or produce market, or the sale of any such items; (ii) the sale of vitamins and supplements, ethnic foods, natural and health food, pet food, and ice cream; (iii) the sale of natural cosmetics, natural health and beauty products; (iv) the sale of packaged beer and wine for off-premises consumption; (v) the operation of a full service bakery; and (vi) the operation of an over-the-counter delicatessen offering sliced or butchered meats and cheeses for off-premises consumption except on an "Incidental Basis." "Incidental Basis" means the area dedicated to the sale of such items occupies the lesser of: (a) 400 square feet of gross floor area; or (b) 4% of the aggregate retail selling space of the subject premises; provided not more than 4 linear feet of retail selling space shall be dedicated to the display and sale of any one category of ancillary products.	Commercial Property (Sprouts Lease)	Civic Property
Any use causing unreasonably loud noises (including any business using exterior loud speakers)	Commercial Property (Sprouts Lease)	Civic Property
Used clothing or thrift store, a "Salvation Army" or "Goodwill" type store or similar business, or a "second hand" store where principle business is selling used merchandise (other than any jewelry store, any store operated in a similar fashion as Gamestop, Play it Again Sports or Plato's Closet or any other upscale resale boutique)	Commercial Property (Sprouts Lease)	Civic Property
Cocktail lounge, bar or tavern or sale of alcoholic beverages for on-premises consumption	Commercial Property (Sprouts Lease)	Civic Property
Animal raising or storage facility (except incidental to a full-line retail pet supply store)	Commercial Property (Sprouts Lease)	Civic Property
Pawn shop, auction house, flea market, swap meet, or junk yard	Commercial Property (Sprouts Lease)	Civic Property
The drilling for and/or removal of subsurface	Commercial Property	Civic Property

<b><u>PROHIBITED USE DESCRIPTION</u></b>	<b><u>PARCEL BENEFITTED</u></b>	<b><u>PARCEL BURDENED</u></b>
substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes	(Sprouts Lease)	
Hotels	Commercial Property (Sprouts Lease)	Civic Property
Church	Commercial Property (Sprouts Lease)	Civic Property
Gun Range or Shooting Club	Commercial Property (Sprouts Lease)	Civic Property
Any facility related to the occult sciences, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets	Commercial Property (Sprouts Lease)	Civic Property

## TRUE COPY CERTIFICATION

I, Jay H. Smith, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.



Signature

State of Tennessee:

County of DAVIDSON:

Personally appeared before me, Denise C. Allis-Wilburn, a notary public for this county and state, Jay H. Smith, who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.



Notary Public

My commission Expires:  
(affix Notary seal)

9-10-18

